

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Substance Use Disorder Withdrawal and Stabilization Services

I.D. No. ASA-51-18-00020-A

Filing No. 157

Filing Date: 2019-03-06

Effective Date: 2019-03-27

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

Action taken: Repeal of Part 816; addition of new Part 816 to Title 14 NYCRR.

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

Subject: Substance Use Disorder Withdrawal and Stabilization Services.

Purpose: Update provisions consistent with treatment developments; definitions; technical and gender neutral language.

Substance of final rule:

1. 916.5(e)(5): Remove the word “full” so that reference to opioid agonist encompasses both methadone and buprenorphine.

2. 816.6(a): Technical correction. Reference to 814.4(c) corrected to 816.4(c).

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 816.5(e)(5) and 816.6(a).

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

Revised Regulatory Impact Statement

A revised regulatory impact statement is not required because the non-substantive changes to the regulation were minor and do not impact the content of this statement.

Revised Regulatory Flexibility Analysis

OASAS has determined that the content in this statement in lieu of regulatory flexibility analysis for small businesses and local governments does not need to be changed by the non-substantive changes to the regulation.

Revised Rural Area Flexibility Analysis

OASAS has determined that the content of this statement in lieu of rural area flexibility analysis will not need to be changed due to the non-substantive changes to the regulation.

Revised Job Impact Statement

No change is necessary for the job impact statement due to the non-substantive changes made to the regulation.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

OASAS received one public comment requesting language in 816.5(e)(5) be amended to “medications for the treatment of opioid use disorder” to include both methadone and buprenorphine. OASAS removed the word “full” therefore encompassing both methadone and buprenorphine.

There was one technical correction at 816.6(a) correcting the section of this Part referenced.

NOTICE OF ADOPTION

Substance Use Disorder Residential Rehabilitation Services for Youth

I.D. No. ASA-51-18-00021-A

Filing No. 179

Filing Date: 2019-03-11

Effective Date: 2019-03-27

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

Action taken: Repeal of Part 817; addition of new Part 817 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 19.15(e), 32.01, 32.07(a) and 32.09

Subject: Substance Use Disorder Residential Rehabilitation Services for Youth.

Purpose: Update provisions consistent with treatment developments; definitions; technical gender language.

Substance of final rule: The Proposed Rule repeals Part 817 and replaces with a new Part 817 relating to the treatment and recovery of persons ages eighteen (18) and under in the OASAS system.

§ 817.1 Legal Base. Sets forth the statutory authority for promulgation of this regulation.

§ 817.2 General Program Standards. Edits for grammar, gender neutral language, and updated terminology; consolidating repetitive or extraneous language regarding requirements for provider policies and procedures and program goals. Subjects include: Policies and procedures; program goals; minimum services; medication assisted treatment; emergency medical kits; food and nutrition; certified capacity; Medicaid; segregation by age; telepractice.

§ 817.3 Admission procedures. Edits for grammar, gender neutral language, and updated terminology; consolidating repetitive or extraneous language. Subjects include: initial determination; level of care determination; prohibition against discrimination; additional requirements for admission of Medicaid eligible individuals; admission criteria.

§ 817.4 Post admission procedures. Edits for grammar, gender neutral language, and updated terminology; consolidating repetitive or extraneous language. Subjects include: testing or referral for infectious diseases consistent with or exceeding Public Health Law; initial evaluation; initial services; medical history; referral and connection.

§ 817.5 Treatment/recovery plan. This is a new section extracted from text in prior subdivisions. Other edits include grammar, gender neutral language, updated terminology, and consolidating repetitive or extraneous language. Subjects include: requirement for a patient-centered treatment/recovery plan; required content; continuing review; progress notes; discharge planning and discharge summary.

§ 817.6 Patient records. Provisions of this section were extracted from text in prior subdivisions. Other edits include grammar, gender neutral language, updated terminology, and consolidating repetitive or extraneous language. Subjects include required documentation; disclosures; and reporting to the Office. Previous sections 817.6 and 817.7 were deleted.

§ 817.7 Staffing. Provisions of this section were extracted from text in prior subdivisions. Other edits include grammar, gender neutral language, updated terminology, and consolidating repetitive or extraneous language. Subjects include: medical director and medical staff; staff sharing; supervision and training; program director; other clinical staff; additional required staff including maintenance and security, volunteers and interns, health coordinator, community support specialist, intake/admissions coordinator. Previous sections 817.8 and 817.9 were deleted: medical policies and services and restraint and seclusion prohibited are covered in other sections of this Part or other Parts of this Chapter.

§ 87.8 Severability.

§ 817.9 Savings and renewal clause.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 817.2(a)(8) and 817.7(e)(6).

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

Revised Regulatory Impact Statement

A revised regulatory impact statement is not required because the non-substantive changes to the regulation were minor and do not impact the content of this statement.

Revised Regulatory Flexibility Analysis

OASAS has determined that the content in this statement in lieu of regulatory flexibility analysis for small businesses and local governments does not need to be changed by the non-substantive changes to the regulation.

Revised Rural Area Flexibility Analysis

OASAS has determined that the content of this statement in lieu of rural area flexibility analysis will not need to be changed due to the non-substantive changes to the regulation.

Revised Job Impact Statement

No change is necessary for the job impact statement due to the non-substantive changes made to the regulation.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

1. 817.2(a)(8) added (v) required use of screening tool approved by OASAS for services relating to problem gambling to reinforce requirements outlined in Part 857.

2. Providers requested OASAS issue guidance regarding determining appropriate group size and purpose as well as assessing group efficacy and monitoring patient experience, all of which are required by regulation. OASAS will issue guidance upon adoption of these regulations.

3. Guidance requested on requirements to enter into agreements with opioid full agonist programs for third party dosing/administration of methadone in residential settings – OASAS will issue guidance upon adoption of this regulation.

4. Guidance requested on restraint and seclusion will be issued upon adoption of this regulation.

5. Comment requesting reversion to the previous rules requiring development of a comprehensive evaluation within 7 days of admission and a treatment/recovery plan within 14 days. All programmatic regulations are now consistent in that they require development of an initial evaluation within 3 days and a treatment/recovery plan within 10 days. Guidance will be issued on development of the initial evaluation and treatment/plan.

6. Comments requesting additional guidance on staff ratios for clinical and milieu staff - Part 800 contains additional information on clinical staff and providers are expected to use judgement when ascertaining ratios around milieu staff.

7. 817.7(e)(6): Comment requesting the addition of Licensed Mental Health Counselor as meeting staffing requirements as OASAS now grants waivers allowing use of LMHC to serve this function. OASAS has added LMHC as they may perform the necessary functions within their scope of practice.

NOTICE OF ADOPTION

Substance Use Disorder Inpatient Rehabilitation

I.D. No. ASA-51-18-00022-A

Filing No. 158

Filing Date: 2019-03-06

Effective Date: 2019-03-27

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

Action taken: Repeal of Part 818; addition of new Part 818 to Title 14 NYCRR.

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

Subject: Substance Use Disorder Inpatient Rehabilitation.

Purpose: Update provisions consistent with treatment developments; definitions; technical gender language.

Substance of final rule: Section 818.2(a)(8)(5) added requirement for use of an OASAS approved screening tool for problem gambling to be consistent with and reinforce requirements in Part 857.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 818.2(a)(8)(v).

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

Revised Regulatory Impact Statement

A revised regulatory impact statement is not required because the non-substantive changes to the regulation were minor and do not impact the content of this statement.

Revised Regulatory Flexibility Analysis

OASAS has determined that the content in this statement in lieu of regulatory flexibility analysis for small businesses and local governments does not need to be changed by the non-substantive changes to the regulation.

Revised Rural Area Flexibility Analysis

OASAS has determined that the content of this statement in lieu of rural area flexibility analysis will not need to be changed due to the non-substantive changes to the regulation.

Revised Job Impact Statement

No change is necessary for the job impact statement due to the non-substantive changes made to the regulation.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

One public comment was received requesting a reinforcement of existing OASAS rules regarding screening for problem gambling. Part 818.2(a)(8) added (v) requiring the use of an OASAS approved screening tool for services relating to problem gambling for consistency with other regulations. This is already required by Part 857 and is reinforced here.

NOTICE OF ADOPTION

General Service Standards for Substance Use Disorder Outpatient Programs

I.D. No. ASA-51-18-00024-A

Filing No. 178

Filing Date: 2019-03-11

Effective Date: 2019-03-27

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

Action taken: Repeal of Part 822; addition of new Part 822 to Title 14 NYCRR.

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

Subject: General Service Standards for Substance Use Disorder Outpatient Programs.

Purpose: Update provisions consistent with treatment developments; definitions; technical gender language.

Substance of final rule: The Adopted Rule repeals Part 822 and replaces with a new Part 822 relating to outpatient treatment of addiction disorders in the OASAS system.

§ 822.1 Background. Edits to this section are indicative of edits throughout the proposed regulation that remove references to “opioid treatment program” and “methadone” since all are essentially outpatient programs. Other language changes include use of “substance use disorder” to replace prior stigmatizing language.

§ 822.2 Sets forth the statutory authority for promulgation of this regulation.

§ 822.3 Applicability. Providers certified, funded or otherwise authorized by the Office to provide an outpatient treatment program. Programs providing opioid full agonist treatment medications must obtain additional approval from a federally-approved accrediting entity.

§ 822.4 Savings and renewal clause.

§ 822.5 Definitions. Amendments to this section include edits for grammar, gender neutral language, and updated terminology; replacing stigmatizing or punitive-tending language with language more appropriate to treatment of a chronic medical condition. Other amendments are intended to promote clinical flexibility and patient-centered care in group sizes, pre-admission services, treatment for family members and significant others.

§ 822.6 Standards pertaining to Medicaid reimbursement. Clarifies option to treat family members and significant others and the limitations of Medicaid reimbursement for outpatient care.

§ 822.7 General program standards. Edits for grammar, gender neutral language, and updated terminology; consolidating repetitive or extraneous language. Makes medication assisted treatment a required service; updates regulation to accommodate recent and concurrent changes to Part 800 and Part 830 (re. telepractice); clarifies options for staff sharing; conforms standards for programs providing opioid full-agonist medications to current federal standards.

§ 822.8 Admission, initial services, transfers and readmissions. Amendments to this section include edits for grammar, gender neutral language, and updated terminology; replacing stigmatizing or punitive-tending language with language more appropriate to treatment of a chronic medical condition. Incorporates provisions from sections previously separating types of outpatient programs. Deletes pre-admission risk assessment as this would be conducted as part of an initial assessment; clarifies post-admission tests, documentation, medical history.

§ 822.9 Treatment/recovery plan. Edits include grammar, gender neutral language, updated terminology, and consolidating repetitive or extraneous language. Subjects include: requirement for a patient-centered treatment/recovery plan; required content; continuing review; referrals and readmissions; pregnancy; communicable diseases.

§ 822.10 Case records. Amendments to this section include edits for grammar, gender neutral language, and updated terminology; replacing stigmatizing or punitive-tending language with language more appropriate to treatment of a chronic medical condition.

§ 822.11 Documentation of services. Amendments to this section include edits for grammar, gender neutral language, and updated terminology; replacing stigmatizing or punitive-tending language with language more appropriate to treatment of a chronic medical condition.

§ 822.12 Level of care transition planning (formerly discharge planning). Amendments to this section include edits for grammar, gender neutral language, and updated terminology; replacing stigmatizing or punitive-tending language with language more appropriate to treatment of a chronic medical condition. Subjects include: transition or discharge criteria; transition planning, and discharge summary.

§ 822.13 Continuing care. Amendments to this section include edits for grammar, gender neutral language, and updated terminology; replacing stigmatizing or punitive-tending language with language more appropriate to treatment of a chronic medical condition. Clarifies that continuing care is not appropriate for persons receiving opioid full agonist medications.

§ 822.14 Additional locations. Removes requirements for location of an additional location.

§ 822.15 Additional requirements for chemical dependence outpatient rehabilitation services. Technical edits only.

§ 822.16 Additional requirements for programs providing opioid full agonist treatment medications. Amendments to this section include edits for grammar, gender neutral language, and updated terminology; replacing

stigmatizing or punitive-tending language with language more appropriate to treatment of a chronic medical condition. Conforms standards for programs providing opioid full-agonist medications to current federal standards. Moves provisions applicable to all outpatient programs to other sections of this Part.

§ 822.17 Severability. Declares provisions of this Part to be severable.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 822.5, 822.7, 822.9, 822.12 and 822.15.

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

Revised Regulatory Impact Statement

A revised regulatory impact statement is not required because the non-substantive changes to the regulation were minor and do not impact the content of this statement.

Revised Regulatory Flexibility Analysis

OASAS has determined that the content in this statement in lieu of regulatory flexibility analysis for small businesses and local governments does not need to be changed by the non-substantive changes to the regulation.

Revised Rural Area Flexibility Analysis

OASAS has determined that the content of this statement in lieu of rural area flexibility analysis will not need to be changed due to the non-substantive changes to the regulation.

Revised Job Impact Statement

No change is necessary for the job impact statement due to the non-substantive changes made to the regulation.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

1. 822.5(j): Comments requested added clarity when referencing programs which provide opioid agonist treatment.

2. Comments received requesting additional clarification on continuing care treatment. Such guidance already exists on the OASAS website.

3. 822.5(o): Comments received requested either group size limitations be added back into the regulation or that additional guidance be issued on how programs should determine appropriate group size. Removal of specified group counseling size is consistent with removal of all other clinical practice instruction in OASAS programmatic regulations. Best practices and other guidance will be issued upon adoption of this regulation.

4. 822.5(q): Definition for individual counseling added back in. Unintentionally deleted when updating the regulation.

5. 822.5(r): Reference to service hours per week consistent with removal of all other clinical practice instruction in OASAS programmatic regulations. Best practices and other guidance will be issued upon adoption of this regulation.

6. 822.5(v) and (w): Comments were received to correct references to “opioid agonist”, “opioid full agonist” and “opioid partial agonist” in the regulation. All three definitions were added to Part 800 “OASAS Treatment Services: General Provisions.” All references will be consistent with the definitions defined therein.

7. 822.7(a)(5): added (iv) requiring use of a problem gambling screening tool approved by the Office consistent with Part 857.

8. 822.7(a)(8)(i): Comments requested removal of OASAS approval of program capacity. OASAS will continue to require agency approval for certified program capacity.

9. 822.7(d): Removed and added to Part 800 “OASAS Treatment Services: General Provisions.”

10. 822.7(e): Comments opposing the mandate of creating a community committee are irrelevant as such committee is permissive but not mandated by the regulation.

11. 822.7(f): Comments requested either removing medication administration and observation and medication management and peer support services from the list of required services or issuing additional guidance for programs that would seek to offer these services through referral relationships. Best practices and other guidance will be issued upon adoption of this regulation.

12. Technical corrections throughout for formatting, numbering and lettering, missing text:

13. 822.7(j)(1): Requested language directing a program director be onsite and fulltime is inconsistent with OASAS goal of removing clinical requirements from regulation.

14. 822.7(j)(3)(ii): Requested patient ratios for physicians, physician assistants and nurse practitioners is inconsistent with OASAS goal of removing clinical requirements from regulation. Regulation requires coverage as adequate and necessary.

15. 822.7(j)(3)(iv): missing word “full” – to be consistent with definition of opioid full agonist.

16. 822.9(b): added new (4) requiring significant medical issues be addressed as part of the treatment/recovery plan. Unintentionally deleted after revision.

17. 822.9(b)(5): Comments requested that Licensed Mental Health Counselors (LMHCs) be added to the list of licensed professionals to review, approve and sign a treatment plan. LMHCs may not diagnose pursuant to their scope of practice and therefore are not able to sign the treatment/recovery plan.

18. 822.12(a): Comments requested language be modified for clarity.

19. 822.12(d): Requested specification regarding information included in the summary will be addressed in guidance.

20. 822.15(d): Requested removal of caseload ratio for outpatient rehabilitation is not appropriate because this is a higher level of outpatient care.

21. Comments requested additional guidance be issued on trauma informed care and utilization of toxicology screening/testing. Best practices and other guidance will be issued upon adoption of this regulation.

22. Comments requested removal of requirements around communicable disease testing which would be inconsistent with other programmatic regulations and have not changed from the previous version of this regulation.

23. Comments requesting modification/elimination of language regarding patient transfers would be inconsistent with the purpose of this regulation and no new requirements have been added regarding patient transfer.

24. Comments requested that a definition of face-to-face be added to include telepractice are irrelevant as Part 830 clearly outlines the definitions and expectations of providers that become designated to deliver services via telepractice.

25. Comments requesting eliminating responsibility for offering naloxone education and training are inconsistent with OASAS policy to offer naloxone education and training as needed.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

General Provisions

I.D. No. ASA-51-18-00019-RP

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

Proposed Action: Amendment of Part 800 of Title 14 NYCRR.

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

Subject: General provisions.

Purpose: Update provisions consistent with treatment developments; definitions; technical gender language.

Substance of revised rule (Full text is posted at the following State website: oasas.ny.gov): The Revised Proposed Rule amends certain provisions of Part 800 applicable to all OASAS programs:

§ 800.3(f), (u), (v), (w) and (x): Definitions. Clarifies requirements for meeting the definition of a “multi-disciplinary team” when treating problem gambling. Adds definitions for problem gambling professional staff consistent with Part 857 and for opioid agonist, opioid full agonist and opioid partial agonist, consistent with changes to programmatic regulations in this Chapter.

§ 800.3(d) and (t) Definitions. Amends the definition of “Medical Director” to remove references to specific certifying entities due to discontinuation of the subspecialty by one certifying entity; certification is still required from a certifying entity appropriate to the director’s primary or subspecialty certifying Board. Requires all medical directors to have or to acquire a federal DATA 2000 waiver (buprenorphine certified). Also consolidates language related to medical director responsibilities.

Adds a definition of “addiction services” consistent with language used by the federal Center for Medicare and Medicaid Services.

Add § 800.4(d) and (f): Access to Medication Assisted Treatment. Clarifies the expectation that all providers are required to admit patients on medication assisted treatment and continue such therapy after admission to ensure treatment continuity, consistent with OASAS guidance. Adds language requiring development of a diversion control plan for controlled substances applicable to all certified programs consistent with changes to programmatic regulations in this Chapter.

§ 800.4 Access to Medication Assisted Treatment. Adds a new section requiring all programs certified by the Office to facilitate access to medication assisted treatment through direct provision of such medication or by contract or linkage with private prescribing professionals. Requires all

practitioners employed in a treatment program who are eligible for a DATA 2000 waiver to acquire such certification. Requires all programs to maintain an emergency medical kit including at least one naloxone emergency overdose prevention kit available during all hours of operation.

§ 800.5 and § 800.6 Waiver and Severability. Both renumbered to accommodate the new section 800.4.

Revised rule compared with proposed rule: Substantial revisions were made in sections 800.3 and 800.4.

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

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

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

Revised Regulatory Impact Statement

OASAS has determined that a revised regulatory impact statement is not required because the changes to this regulation do not impact any of the issues previously addressed by the regulatory impact statement.

Revised Regulatory Flexibility Analysis

OASAS has determined that the revised rule will not impose any adverse impact on small businesses or local governments. This revised proposed rulemaking does not affect businesses or local governments as it includes provisions applicable to all programs certified, licensed, funded or otherwise authorized by the Office to provide addiction services regardless of location, size, modality or operator.

The revised proposed rule will be posted on the agency website. Agency review process involves input from trade organizations representing providers in diverse geographic locations, local governments, and other behavioral health providers.

Revised Rural Area Flexibility Analysis

OASAS has determined that the revised rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This revised proposed rulemaking does not affect businesses or local governments in any geographic area, including rural areas, since it relates to provisions applicable to all programs certified, licensed, funded or otherwise authorized by the Office to provide services regardless of location, size, modality or operator.

The revised proposed rule will be posted on the agency website. Agency review process involves input from trade organizations representing providers in diverse geographic locations, local governments, and other behavioral health providers.

Revised Job Impact Statement

OASAS has determined that no changes are required to the revised job impact statement because there will be no impact on the number of jobs and employment opportunities resulting from adoption of this regulation.

Assessment of Public Comment

1. 800.3(f): Clarified requirements regarding problem gambling service provision consistent with other regulatory requirements.

2. 800.3(f): Comments requested removal of requirement that at least one fulltime credentialed alcoholism and substance abuse counselor be a member of the multidisciplinary team which would be inconsistent with OASAS requirements for a competent multi-disciplinary team.

3. 800.3(u): Added definition for problem gambling professional staff consistent with Part 857.

4. Definitions added at 800.3(v), (w) and (x) for opioid agonist, opioid full agonist and opioid partial agonist which are applicable for all OASAS programs – moved from Part 822.

5. Add 800.4(f): Added language requiring development of a diversion control plan for controlled substances applicable to all certified programs – moved from Part 822.

6. 800.4(d) added: Comment requested that OASAS should clarify the expectation that all providers are required to admit patients on medication assisted treatment and continue such therapy after admission to ensure treatment continuity – consistent with OASAS guidance.

7. Many comments were received regarding the requirement to facilitate access to medication assisted treatment, both in support and in opposition. This requirement is consistent with regulatory changes in all programmatic regulations and reflects diversion from previous abstinence based models to conform with treating substance use disorder as a chronic condition. Comments received regarding the requirement that providers facilitate rapid access to medication assisted treatment, ensure, to the extent feasible, individuals on medication will be maintained and provide education on all forms of medication assisted treatment will be addressed in guidance to the field.

8. Comments requested amending language to “substance use disorder”

rather than “addiction services” are inconsistent with OASAS regulations. Certified providers are required to treat substance use disorder and problem gambling disorder, the term “addiction services” as defined in this regulation, encompasses both.

9. Comments requested addition of regulatory language on medication dosing guidelines which is more appropriate issued from the office of the medical director.

10. Comments requested removing the requirement that naloxone kits at each OASAS certified program, which is already a requirement of OASAS certified, funded or otherwise authorized programs.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-18-00011-A
Filing No. 169
Filing Date: 2019-03-08
Effective Date: 2019-03-27

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 October 10, 2018 issue of the Register, I.D. No. CVS-41-18-00011-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-51-18-00002-A
Filing No. 172
Filing Date: 2019-03-08
Effective Date: 2019-03-27

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 December 19, 2018 issue of the Register, I.D. No. CVS-51-18-00002-P.

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

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

Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-18-00003-A
Filing No. 165
Filing Date: 2019-03-08
Effective Date: 2019-03-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the December 19, 2018 issue of the Register, I.D. No. CVS-51-18-00003-P.

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

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

Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-18-00004-A
Filing No. 173
Filing Date: 2019-03-08
Effective Date: 2019-03-27

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 exempt class.

Text or summary was published in the December 19, 2018 issue of the Register, I.D. No. CVS-51-18-00004-P.

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

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

Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-51-18-00005-A
Filing No. 167
Filing Date: 2019-03-08
Effective Date: 2019-03-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the December 19, 2018 issue of the Register, I.D. No. CVS-51-18-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-51-18-00006-A

Filing No. 171

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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 December 19, 2018 issue of the Register, I.D. No. CVS-51-18-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-51-18-00007-A

Filing No. 168

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the December 19, 2018 issue of the Register, I.D. No. CVS-51-18-00007-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-51-18-00008-A

Filing No. 170

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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 December 19, 2018 issue of the Register, I.D. No. CVS-51-18-00008-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-51-18-00009-A

Filing No. 166

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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 positions in the non-competitive class.

Text of final rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service, by deleting therefrom the position of Assistant Director Policy Analysis and Strategic Planning (1) and by adding thereto the positions of Director Strategic Planning and Management (1) and Manager Diversity and Inclusion (2).

The "ø" in the title above was removed.

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

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

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

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

Assessment of Public Comment

The agency received no public comment.

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

I.D. No. CVS-13-19-00001-P

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

Proposed Action: Amendment of 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 proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by increasing the number of positions of Scientist Archeology from 3 to 4.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

Jurisdictional Classification

I.D. No. CVS-13-19-00002-P

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

Proposed Action: Amendment of 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 of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Environmental Conservation, by increasing the number of positions of Associate Counsel from 9 to 10.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

Jurisdictional Classification

I.D. No. CVS-13-19-00003-P

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

Proposed Action: Amendment of Appendix 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 exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Transportation, by deleting therefrom the position of Deputy Inspector General, by decreasing the number of positions of Investigative Auditor from 2 to 1 and by increasing the number of positions of Special Assistant from 16 to 18.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

Jurisdictional Classification

I.D. No. CVS-13-19-00004-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the positions of DHSES Program Manager (4).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

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

Jurisdictional Classification

I.D. No. CVS-13-19-00005-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To add a subheading and to classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department by adding thereto the subheading "Office of Employee Relations," and the position of Affirmative Action Administrator 2 (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-19-00001-P, Issue of January 9, 2019.

**Division of Criminal Justice
Services**

NOTICE OF ADOPTION

Case Record Management

I.D. No. CJS-32-18-00005-A

Filing No. 182

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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

Action taken: Amendment of Parts 348.1, 348.4, 348.5, 348.6 and 348.7 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(a); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Case Record Management.

Purpose: Update existing Rule to reflect services which will be performed by probation departments as a result of Raise the Age Law.

Text or summary was published in the August 8, 2018 issue of the Register, I.D. No. CJS-32-18-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Danise A. Linen, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: danise.linen@dcjs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

DCJS received numerous comments commending the agency and urging the adoption of the proposed regulations.

NOTICE OF ADOPTION

Investigations and Reports

I.D. No. CJS-32-18-00006-A

Filing No. 181

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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

Action taken: Amendment of Parts 350.3, 350.6, 350.7, 350.8, 350.9 and 350.10 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Investigations and Reports.

Purpose: Update existing Rule to reflect services which will be performed by Probation departments as a result of Raise the Age law.

Text or summary was published in the August 8, 2018 issue of the Register, I.D. No. CJS-32-18-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Danise A. Linen, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: danise.linen@dcjs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Raise the Age ("RTA") Law became effective October 1, 2018. Recognizing the need for updated and newly drafted regulation in this area, Division of Criminal Justice Service ("DCJS") Office of Probation

and Correctional Alternatives (“OPCA”) convened a probation practitioner workgroup and performed a thorough review of existing regulation to assess the impact of RTA legislation on probation practice. In addition to staff from DCJS, workgroup members included representatives from the New York State Council of Probation Administrators (NYSCOPA) and New York State Probation Officers’ Association (NYSPOA) as well as probation professionals from throughout the state.

Several comments from the public were received during the public comment period and are summarized below.

1. One commenter offered support of RTA Law and acknowledged “the need for New York to join the rest of the country with this shift in the criminal justice system.” He further reiterated that:

It is vital that the state provide one hundred percent funding to Probation Departments in order to ensure our ability to comply with the drafted rules and regulations. There are two critical areas in county Probation Departments where funding will be instrumental to support our compliance with rules and regulations; staffing and programming.

2. Similarly, another commenter, while offering support of RTA Law, expressed excitement to “see sixteen and seventeen-year-olds (for the most part) treated as Juveniles,” and further added that they were “thrilled that New York State has offered to fully fund, not only the positions associated with the legislation but services for this population as well.”

3. Another commenter, while offering support of RTA Law, felt “privileged to have been part Of the work group for the proposed State Rule changes related to Raise the Age that will assist youth involved in the justice system to achieve greater success.”

4. While offering support of the concept of RTA Law, and the implementation of rules and regulations necessary for its success, one commenter noted their concern about the availability of resources, stating:

Our major concern continues to be the availability of such services in all jurisdictions. Rural counties may not have the same availability of services as more urban locations. Furthermore, many localities may be utilizing effective services, which may not have such validation. Probation without the necessary services and interventions in their “toolbox” will not be as effective as they could be and will ultimately compromise the success of “Raise the Age.” Along with services, Probation Departments must have sufficient resources to make sure there is no impact on existing workloads. NYSPOA advocates for 100% funding of any local impact resulting from Raise the Age.

5. Lastly, while offering support of RTA Law and the corresponding rules and regulations, one commenter stated:

All of us working in this area are aware that these rules and regulations represent our initial attempt to provide guidance to probation practitioners across the state. As we begin to implement this new law, I am sure there will be a need to fine tune these procedures. With the state promising appropriate guidance and resources, I am confident that we will be successful in providing positive outcomes to our adolescent population.

Response:

DCJS acknowledges and greatly appreciates the support received from the many probation professionals throughout the State.

NOTICE OF ADOPTION

Probation Supervision

I.D. No. CJS-32-18-00007-A

Filing No. 183

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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

Action taken: Amendment of sections 351.6 and 351.7 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Probation Supervision.

Purpose: Update existing Rule to reflect services which will be performed by Probation departments as a result of Raise the Age law.

Text or summary was published in the August 8, 2018 issue of the Register, I.D. No. CJS-32-18-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Danise A. Linen, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Raise the Age (“RTA”) law became effective October 1, 2018. Recognizing the need for updated and newly drafted regulations in this area, the Division of Criminal Justice Service (“DCJS”) Office of Probation and Correctional Alternatives (“OPCA”) convened a probation practitioner workgroup and performed a thorough review of existing regulations to assess the impact of RTA legislation on probation practice. In addition to staff from DCJS, workgroup members included representatives from the New York State Council of Probation Administrators (NYSCOPA) and New York State Probation Officers’ Association (NYSPOA) as well as probation professionals from throughout the state.

Several comments from the public were received during the public comment period and are summarized below.

Comment 1:

Sections 351.7(a)(1) and 356.8(a)(4) should be revised to require probation to engage youth “by identifying the positive aspects of the probationer’s life and developing an individually-tailored case plan that build on those strengths and interests.”¹ The regulations should highlight positive youth development as a primary goal and clearly prioritize the importance of typical adolescent development needs such as recreation, connection to mentors and other positive adults and opportunities for leadership development and meaningful connections with local community based organizations and supports.²

Response 1:

DCJS agrees that the use of strength-based approaches, which includes focusing on the positive aspects of a youth’s life, leads to effective engagement, and better outcomes for youth. These proposed regulations contain best practices, including, but not limited to, strength-based approaches, risk-needs-responsivity, incorporation of the stages of change, cognitive behavioral interventions, client engagement strategies, implicit bias and racial disparity training, and trauma-informed care. Probation services currently takes into consideration a youth’s protective factors, such as community member support, and incorporates them into case planning efforts. The focus on individual strengths and protective factors, coupled with identifying certain needs, allows for the successful development of an individually-tailored case plan that results in positive outcomes. In addition to rules and regulations, probation training addresses positive youth development programs.

Comment 2:

Section 359.5: General Requirements for Probation Voluntary Assessment and Case Planning Services in Youth Part. Subsection (c)(6) requires that a case plan address the “identified criminogenic needs based upon the nature of the behaviors contributing to the present offense”. The emphasis on “criminogenic needs” seems to rely too heavily on past practices of viewing adolescents through the lens of the charged offense. We encourage a strength based, trauma-focused analysis that evaluates a young person’s history, including family story, trauma experience, educational and mental health needs, social-emotional strengths and weaknesses. We propose alternative language that a case plan address “a young person’s life history, including family, educational, mental health, social emotional stage and trauma history”. We recommend this suggestion be considered in the following sections where “criminogenic needs/need areas” is currently proposed: Sections 359.6(b)(1); 359.7(a); 359.8(b). We further recommend that the language “criminogenic needs” be eliminated in Sections 351.7(b)(1) and 351.7(2) of Part 351 of the proposed regulations and be replaced with the words “the probationer’s individual needs.”

Response 2:

Part 351 governs probation services for adjudicated and convicted individuals sentenced to probation supervision. Reducing recidivism is the cornerstone of probation services. Research shows that focusing on criminogenic needs reduces recidivism. Thus, research supports case planning that addresses criminogenic needs. However, DCJS agrees in part, and will modify Part 359 to remove “criminogenic” from that Part, in recognition that voluntary assessment and case planning occurs pre-plea/conviction.

General Comments:

Additionally, DCJS received numerous comments commending the agency and urging the adoption of the proposed regulations.

NOTICE OF ADOPTION

Graduated Sanctions and Violations of Probation, Retitled to: Graduated Responses

I.D. No. CJS-32-18-00008-A

Filing No. 176

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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

Action taken: Amendment of Part 352 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Graduated Sanctions and Violations of Probation, retitled to: Graduated Responses.

Purpose: Update existing Rule to reflect services which will be performed by Probation departments as a result of Raise the Age law.

Text or summary was published in the August 8, 2018 issue of the Register, I.D. No. CJS-32-18-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Danise A. Linen, NYS Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Raise the Age (“RTA”) law became effective October 1, 2018. Recognizing the need for updated and newly drafted regulations in this area, the Division of Criminal Justice Service (“DCJS”) Office of Probation and Correctional Alternatives (“OPCA”) convened a probation practitioner workgroup and performed a thorough review of existing regulations to assess the impact of RTA legislation on probation practice. In addition to staff from DCJS, workgroup members included representatives from the New York State Council of Probation Administrators (NYSCOPA) and New York State Probation Officers’ Association (NYSPOA) as well as probation professionals from throughout the state.

Several comments from the public were received during the public comment period and are summarized below.

Comment 1:

Pertinent language currently states “When the youth is a 16 or 17-year-old, the Probation Officer shall include the parent or other person(s) legally responsible for the youths care, where feasible.” We recommend that the language be amended to allow defense counsel for the youth to be present at the administrative review meeting and for probation to make best efforts to contact defense counsel. We recognize that, in most cases, defense counsel’s representation will have terminated. However, public defender offices like ours would often be able to make attorneys available to attend these meetings to help the youth and their family avoid a violation or incarceration as a result of the alleged violation. We suggest the following language in place of the proposed language: “When the youth is a 16 or 17-year-old, the Probation Officer shall include the parent or other person(s) legally responsible for the youth’s care, and make best efforts to contact defense counsel of record, where feasible.”

Response 1:

Part 352 provides for an internal probation process called an Administrative Review, which is an opportunity for the department to meet with youths and/or their families to address compliance concerns and to reiterate the actions and/or behavior that will be expected going forward. DCJS will encourage probation officers, through training, to engage with applicable defense attorney’s where feasible and where it may assist with correcting errant behavior to prevent technical, non-absconding violations of probation. This is difficult to mandate given the fact that legal defense resources vary from jurisdiction to jurisdiction.

General Comments:

Additionally, DCJS received numerous comments commending the agency and urging the adoption of the proposed regulations.

NOTICE OF ADOPTION

Preliminary Procedure for Article 3 JD Intake, Retitled to: Probation Services for Article 3 Juvenile Delinquency (JD)

I.D. No. CJS-32-18-00009-A

Filing No. 175

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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

Action taken: Amendment of Part 356 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: Preliminary Procedure for Article 3 JD Intake, retitled to: Probation Services for Article 3 Juvenile Delinquency (JD).

Purpose: Update existing Rule to reflect services which will be performed by Probation departments as a result of Raise the Age law.

Text or summary was published in the August 8, 2018 issue of the Register, I.D. No. CJS-32-18-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Danise A. Linen, NYS Division of Criminal Justice Services, 80 South Swan Street Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Raise the Age (“RTA”) law became effective October 1, 2018. Recognizing the need for updated and newly drafted regulations in this area, the Division of Criminal Justice Service (“DCJS”) Office of Probation and Correctional Alternatives (“OPCA”) convened a probation practitioner workgroup and performed a thorough review of existing regulations to assess the impact of RTA legislation on probation practice. In addition to staff from DCJS, workgroup members included representatives from the New York State Council of Probation Administrators (NYSCOPA) and New York State Probation Officers’ Association (NYSPOA) as well as probation professionals from throughout the state.

Several comments were received from the public. The comments and DCJS’ responses are summarized below.

Comment 1:

Sections 351.7(a)(1) and 356.8(a)(4) should be revised to require probation to engage youth “by identifying the positive aspects of the probationer’s life and developing an individually-tailored case plan that build on those strengths and interests.”¹The regulations should highlight positive youth development as a primary goal and clearly prioritize the importance of typical adolescent development needs such as recreation, connection to mentors and other positive adults and opportunities for leadership development and meaningful connections with local community based organizations and supports.²

Response 1:

DCJS agrees that the use of strength-based approaches, which includes focusing on the positive aspects of a youth’s life, leads to effective engagement, and better outcomes for youth. These proposed regulations contain best practices, including, but not limited to, strength-based approaches, risk-needs-responsivity, incorporation of the stages of change, cognitive behavioral interventions, client engagement strategies, implicit bias and racial disparity training, and trauma-informed care. Probation services currently takes into consideration a youth’s protective factors, such as community member support, and incorporates them into case planning efforts. The focus on individual strengths and protective factors, coupled with identifying certain needs, allows for the successful development of an individually-tailored case plan that results in positive outcomes. In addition to rules and regulations, probation training addresses positive youth development programs.

Comment 2:

The regulations must be amended to restrict the scope of any evaluation conducted by probation as part of the voluntary assessment and case planning process. These initial voluntary assessments, which are not presentence investigations, should not seek or include any information concerning pending allegations. Such information should be explicitly excluded, and any assessment made by probation should only be for the purpose of identifying appropriate referrals for voluntary services based on mental and/or behavioral health, educational, vocational, or other identified needs and appropriate case planning to match youth with services, and not to “[p]rioritize criminogenic need areas for intervention” (see Sec. 359.6(b)(1)) or address “the risk of recidivism” (see Sec. 356.1(b)) where there has been no finding or admission of guilt. (See also Sec. 359.1 defining “risk and needs assessment” as “as validated protocol. . . to assess the youth’s risk of re-arrest/recidivism and identify criminogenic needs.”)

The regulations should make clear that probation can evaluate and make appropriate service referrals for youth who choose to participate in voluntary assessments and case planning without employing the formal state-approved risk and needs assessment, which includes an inquiry into facts concerning pending allegations. Nothing in the Raise the Age statute requires that youth engage in a formal state-approved risk and needs assessment prior to voluntarily participating in “a voluntary service plan which may include alcohol, substance abuse, mental health or other services.” See CPL Sec. 722(2) (as amended).

Response 2:

These regulations, which are very much like the provisions provided in

the Family Court Act, protect youth who receive juvenile delinquency intake and adjustment services, and protect youth who participate in voluntary assessment and case planning services from self-incrimination, while allowing the probation department to properly assess a youth's needs and to refer to appropriate services. Therefore, the concerns about incrimination and any potential adverse impact against a youth, prior to conviction, are addressed in the statute and are repeated in regulation.

DCJS proposed regulations reflect the RTA Law. Probation uses risk and needs assessment instruments to objectively identify behavioral and educational/vocational needs, and to develop the required case plan and referral to services, to ensure that the youth's needs are appropriately addressed. DCJS notes that pursuant to CPL 722.00(1), probation departments have the ability to conduct risk and needs assessments, utilizing a validated risk assessment tool.

General Comments:

Additionally, DCJS received numerous comments commending the agency and urging the adoption of the proposed regulations.

NOTICE OF ADOPTION

New Rule 359: Role of Probation in Youth Part of Superior Court

I.D. No. CJS-32-18-00010-A

Filing No. 180

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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

Action taken: Addition of Part 359 to Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); Criminal Procedure Law, art. 722; Family Court Act, art. 3

Subject: New Rule 359: Role of Probation in Youth Part of Superior Court.

Purpose: Update existing Rule to reflect services which will be performed by Probation departments as a result of Raise the Age law.

Substance of final rule: The passage of the Raise the Age legislation becoming effective October 1, 2018 establishes a new Youth Part of Superior Court and a newly established statutory role for probation departments to provide Voluntary Assessment and Case Planning services to Adolescent Offenders and Juvenile Offenders with matters before this court. This new Part 359 - Role of Probation in Youth Part of the Superior Court addresses the role for Probation in this legislation. Section 359.1 provides definitions that support a better understanding of the content of this rule. Section 359.2 states the Objective of this rule in defining probation's role in offering Voluntary Assessment and Case Planning services as well as when probation departments deliver pretrial release services, to the Adolescent Offender and Juvenile Offender charged with a crime in the Youth Part.

Applicability of the rule is addressed in Section 359.3. Jurisdiction is addressed in Section 359.4 where it clarifies to probation departments how a case may be handled when a youth resides in a jurisdiction other than that where the alleged crime occurred. Sections 359.5 and 359.6 outline the general requirements and provision of service for Probation departments in delivering Voluntary Assessment and Case Planning Services in Youth Part. This includes the establishment of the required service. This section also outlines minimum elements for and adoption of probation department policy and procedures. It describes the timeframes for notification to youth of services available to them, advisements to the youth of the voluntary nature of the Voluntary Assessment and Case Planning service, protocols and timeframes for conducting interviews and assessments of youth, case planning and referral to targeted interventions, and re-assessment. It also addresses involvement of parents or other persons legally responsible for the youth's care. Section 359.7 discusses the reporting of youth progress and providing summaries to the court during the pendency of a case as well as when proceeding to a Pre-Sentence Investigation. Section 359.8 addresses how Probation shall handle cases that have been removed from Youth Part to Family Court jurisdiction.

Section 359.9 of this rule discusses the role of probation when providing Pretrial services in Youth Part of Superior Court. It requires that if a probation department provides such a service, the department shall have written policies and procedures for the provision of such service. The content of this section addresses screening of youth, interview and assessment for pretrial release services, advisement to the court of available alternatives to detention, procedures and timeframes for monitoring and reporting to the court regarding compliance of the youth released for this purpose.

Section 359.10 outlines case record keeping requirements by probation for services provided in Youth Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 359.1(j), 359.5(C)(6), (G), 359.6(1), 359.7(A), 359.8(B) and 359.10(c)(9).

Text of rule and any required statements and analyses may be obtained from: Danise Linen, Division of Criminal Justice Services, 80 South Swan Street, Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

Revised Regulatory Impact Statement

Changes made to the last published rule do not necessitate revisions to the previously published Regulatory Impact Statement ("RIS") for 9 NYCRR Part 359. The revisions to the last published rule merely provide clarifications in the text, which require no change to the RIS.

Revised Regulatory Flexibility Analysis

A revised RFASBLG is not being submitted because the non-substantive changes to the proposed rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The revisions to the last published rule merely provide clarifications in the text, which require no change to the RFASBLG.

Revised Rural Area Flexibility Analysis

A revised RAFA is not being submitted because the non-substantive changes to the proposed rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The revisions to the last published rule merely provide clarifications in the text, which require no change to the RAFA.

Revised Job Impact Statement

A revised JIS is not being submitted because the non-substantive changes to the proposed rule will not impose a substantial adverse impact on jobs and employment opportunities. The revisions to the last published rule merely provide clarifications in the text, which require no change to the JIS.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Full responses will be posted on the Division of Criminal Justice Services' website at the following address: www.criminaljustice.ny.gov

Several comments were received from the public. The comments and DCJS' responses are summarized below.

Comment:

One commenter was concerned over youth's due process protections in the Youth Part and suggested that participation in voluntary assessment and case planning could be prejudicial to the youth. That commenter also requested that a youth's counsel be present during the assessment and requested use of signed consent form by both the defense attorney and youth.

Response:

DCJS recognizes the importance of respecting the due process of youth arraigned in the Youth Part and agrees that youth should not be prejudiced in any manner by their participation in voluntary assessment and case planning. Signed consent of counsel is not required by statute precluding DCJS from mandating it in regulation. However, DCJS has developed a standardized "Notice of Agreement for Voluntary Assessment and Case Planning" form that provides for the consent of the youth's attorney and/or parental figures to ensure consistency throughout New York State.

Comment:

One commenter requested that the scope of the evaluation be restricted so as not to include any information including pending allegations, and requested to explicitly exclude such information. The commenter also stated that the Raise the Age ("RTA") statute does not require youth to "engage in a formal state-approved risk and needs assessment prior to voluntarily participating in a voluntary service plan which may include alcohol, substance abuse, mental health or other services." See CPL Sec. 722(2) (as amended)."

Response:

These proposed regulations protect youth who receive juvenile delinquency intake and adjustment services, and protect youth who participate in voluntary assessment and case planning services from incrimination, while allowing the probation department to properly assess a youth's needs and to refer to appropriate services. The proposed regulations reflect the RTA Law. DCJS notes that pursuant to CPL 722.00(1), probation departments are able to conduct risk and needs assessments, utilizing a validated risk assessment tool.

Comment:

One commenter urges review of any risk instrument used and cautions DCJS against using the Family Court RAI.

Response:

DCJS agrees that validated tools should be used and notes that the New York City Family Court RAI tool is used only in guiding juvenile detention decisions in New York City Family Court. The RAI is not for use in criminal court. Executive Law § 530(2)(a) assigns the regulation of risk assessment instruments regarding detention decisions to the New York State Office of Children and Family Services (OCFS).

Comment:

One commenter suggested that the term “state-approved risk assessment tool” used throughout Part 359 should be replaced with “a risk assessment tool properly normed for the youth’s location” in certain locations.

Response:

The “state approved” language in the regulation allows for greater flexibility for local validation, and DCJS agrees that state-approved risk and needs assessment tools should be properly validated.

Comment:

In reference to Subsection 359.5(b), one commenter proposed the following alternative: “[t]he policies and procedures shall require a probation presence at the initial appearance of the regularly scheduled Youth Part, upon notification from the court based upon the request of the adolescent and defense counsel.”

Response:

The regulations were drafted to mirror the statute and provide for the same protections. The presence of probation at Youth Part arraignment is a practical consideration for probation departments to offer services. Having a probation presence at the initial appearance ensures that probation will have the opportunity to offer services in the presence of defense counsel.

Comment:

In reference to the notification of the availability of voluntary assessment and case planning services in Section 359.5(c)(1), the following alternative was proposed:

“[t]he policies and procedures shall address, at a minimum: Notification to Adolescent Offenders and Juvenile Offenders and defense counsel of the availability and provision of Probation Voluntary Assessment and Case Plan services in the Youth Part.”

Response: The regulations were drafted to mirror the statute and provide for the same protections. Pursuant to CPL 722.00(1) “[a]ll juvenile offenders and adolescent offenders shall be notified of the availability of services through the local probation department.” While the statute provides for notice to the Juvenile Offender and Adolescent Offender, it states that such youth may be accompanied by counsel during such assessment and does not provide for an initial notice to defense counsel.

Comment:

The commenters requested that the term “criminogenic” be removed from Part 359.

DCJS agrees to remove “criminogenic” from Part 359, in recognition that voluntary assessment and case planning occurs pre-plea/conviction.

Comment 8:

With regard to the right to counsel during the risk and needs assessment, the following alternative was provided:

“[a]dvise the youth and defense counsel of the voluntary nature of the assessment, case planning and service referral process. And [o]btain a signed Notice of Agreement for Voluntary Assessment and Case Planning Services from the youth and defense counsel indicating his/her willingness to participate in the assessment, case planning and services processes.”

Response:

Signed consent of counsel is not required by statute precluding DCJS from mandating it in regulation, however, DCJS will encourage probation officers to obtain the consent of counsel and has developed a standardized “Notice of Agreement for Voluntary Assessment and Case Planning” form that provides for the consent of the youth’s attorney and/or parental figures to ensure consistency throughout the State.

Comment 9:

One commenter objected to the notification to the court if a youth does not appear for the initial interview.

Response:

It is necessary for probation to notify the Court if a young person does not appear at initial intake for the purpose of managing the Court’s docket/case schedule.

Comment 10:

With regard to Section 369.5(f), one commenter proposed the following language: “All service plans should be specifically tailored in length and intensity for each young person.”

Response:

CPL722.00(2) provides that “to the extent practicable such services shall continue through the pendency of the action and shall further continue where such action is removed in accordance with this article.” Thus, the regulation mirrors the statute. Probation case plans are person-specific, and tailored to address the needs of the individual.

Comment 11:

With regard to subsection 359.5(g), requiring notification of the court if a youth ends or completes services, one commenter believed that this subsection contravened the voluntary directive and proposed the following “Upon request by the Court, the Probation department shall provide the status of a youth’s participation in services.”

Response:

DCJS agrees and will add the suggested language to include “upon request of the court.”

Comment:

One commenter requested that the word “include” in Part Subsection 359.6(b)(4) be replaced with “evaluate,” to allow a parent or guardian’s input to be considered but not necessarily incorporated into a service plan.

Response:

Probation officers are trained to evaluate information and the “input” from parent/guardians, and to give such information the appropriate consideration.

Comment:

Regarding the re-assessment required pursuant to 359.6(c), one commenter requested that a re-assessment be conducted every 45 days instead of every 90 days.

Response:

Reassessment at 45-day intervals is contrary to evidence for this population as it is too brief of a period of time to effectively evaluate change. Research supports the position that re-assessment occurs no sooner than every 90-days. Conducting assessments more frequently creates an unnecessary burden on the youth and the family.

Comment:

In reference to proposed Section 359.9 “Pretrial Release Services in Youth Part of Superior Court,” a commenter noted that “[i]n New York City, pretrial services are not provided by probation prior to appointment of counsel” and requested that New York City be exempted from this section, and if not, provided the following proposed language “Screening of youth at the earliest possible time after appointment of counsel.”

DCJS recognizes that pretrial services are not generally provided by the Probation Department in New York City, but rather through the Criminal Justice Agency. Proposed Part 359.9 was specifically drafted to recognize this.

General Comments:

Additionally, DCJS received numerous comments commending the agency and urging the adoption of the proposed regulations.

DCJS has prepared a more extensive summary of public comments and responses to comments, which is available on its website at the following address: www.criminaljustice.ny.gov

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer Immunizations

I.D. No. EDU-13-19-00009-EP

Filing No. 184

Filing Date: 2019-03-12

Effective Date: 2019-03-12

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

Proposed Action: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2), 6902(1), 6909(5) and (7)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to current immunization standards in order to enhance the protection of the public health by expanding access to immunizations for infants, children and adults, as permitted by section 6909 of the Education Law, effective for the 2018-2019 influenza season and current measles outbreaks in New York State. Section 6909 of the Education Law allows

registered professional nurses to administer immunizations pursuant to non-patient specific orders issued by a licensed physician or a certified nurse practitioner in accordance with the Regulations of the Commissioner of Education. The proposed amendment will authorize more registered professional nurses to immunize infants, children and adults against additional infectious diseases, in accordance with current recommendations from the United States Centers for Disease Control and Prevention (CDC).

According to the CDC, the best way to prevent seasonal influenza is to get vaccinated every year. In 2018, seasonal influenza reached epidemic proportions in New York State and posed a serious health risk for children and those with compromised immune systems or chronic medical conditions. Additionally, there are currently two measles outbreaks in New York State communities with very low vaccination rates. Thus, it is critical to make such vaccines available to as many children and infants as possible to protect them from this disease. According to the CDC, measles is a highly contagious virus. In some cases, it can cause serious health problems, especially in infants and young children. Pregnant women with measles are also at greater risk of having premature or low-birth-rate babies. Thus, the Department recommends that, in order to better address these serious health risks to New Yorkers, the Regulations of the Commissioner of Education be amended to expand access to seasonal influenza and measles vaccines for infants, children and adults effective beginning with the current influenza season and measles outbreaks. Allowing more registered professional nurses to administer seasonal influenza and measles vaccines to infants, children and adults pursuant to a non-patient specific order and protocol will protect more people from these potentially harmful and sometimes fatal diseases.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the July 15-16, 2019 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be July 31, 2019, the date a Notice of Adoption would be published in the State Register. However, emergency adoption is necessary to maximize the potential health benefits of increasing access to the seasonal influenza and measles vaccines in New York State.

Therefore, emergency action is necessary at the March 2019 Regents meeting for preservation of the public health and general welfare in order to enable the State Education Department to immediately implement the proposed amendment, so that registered professional nurses can immunize infants, children and adults against additional infectious diseases, including influenza and measles, pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner, during the 2018-2019 influenza season and the current measles outbreaks in New York State.

It is anticipated that the proposed amendment will be presented for permanent adoption at the July 15-16, 2019 Regents meeting, which is the first scheduled meeting after the expiration of the 60-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer Immunizations.

Purpose: To conform the regulation to current immunization standards.

Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.counsel.nysed.gov/rules/full-text-indices/>): The Commissioner of Education proposes to amend subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education relating to authorizing registered professional nurses (RNs) to administer immunizations pursuant to a non-patient specific order and protocol issued by a licensed physician or certified nurse practitioner. The following is a summary of the proposed rule:

Subparagraph (i) of paragraph (1) of subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education is amended by adding a definition of "immunizing agent". This definition helps to ensure that RNs immunize patients with vaccines and immunizing drugs approved by the federal Food and Drug Administration to immunize persons against specific infectious diseases. This definition will also allow RNs to immunize children and adults against infectious diseases consistent with current recommendations of the U.S. Centers for Disease Control. Subparagraph (ii) of paragraph (1) adds the definition of "entity". This definition helps ensure that organizations that employ RNs who administer immunizations are authorized pursuant to the public health law or education law to provide professional nursing services.

Paragraph (2) of subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education amends and reorganizes existing regulatory provisions that authorize RNs to administer immunizing agents pur-

suant to a non-patient specific order and protocol issued by a licensed physician or certified nurse practitioner. The proposed amendment also deletes a requirement that an RN be employed or act "as an agent for the Visiting Nurses Association or other equivalent organization..." to immunize infants and children. The proposed amendment deletes other outdated requirements relating to adult and pediatric immunizations.

Paragraph (3) of subdivision (a) of section of 64.7 is amended to clarify provisions relating to orders and protocols. The proposed amendment requires that the written non-patient specific order include: (a) the name, license number and signature of the licensed physician or certified nurse practitioner who prescribes the non-patient specific order and protocol; (b) the name of the specific immunizing agent to be administered; (c) a protocol for administering the ordered immunizing agent or a specific reference to a separate written protocol for administering the ordered immunizing agent; (d) the period of time that the order is effective, including the beginning and ending dates; (e) a description of the group(s) of persons to be treated, including an age range for these persons; and (f) the name and license number of the RNs authorized to execute the non-patient specific order and or the name of the entity that employs or contracts with RNs to execute the non-patient specific order and protocol.

The proposed amendment also requires the written protocol, at a minimum, to require the RNs to: (a) assess each potential recipient for conditions that would qualify or preclude him or her from receiving the ordered immunizing agent(s); (b) provide the potential recipients with federally required vaccine information, if applicable; (c) obtain informed consent; (d) document the administration of the ordered immunizing agent (s); (e) report adverse outcomes, as may be required by federal law; (f) report the administration of the immunizing agent, as may be required by New York law.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 9, 2019.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 474-8966, email: legal@nysed.gov

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, NYS Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Paragraph (a) of subdivision (6) of section 6527 of the Education Law authorizes registered professional nurses to administer immunizations pursuant to a non-patient specific order and protocol prescribed by a licensed physician.

Paragraph (1) of section 6902 of the Education Law defines the practice of the profession of nursing for registered professional nurses.

Paragraph (a) of subdivision (4) of section 6909 of the Education Law authorizes registered professional nurses to administer immunizations pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

Paragraph (a) of subdivision (6) of section 6527 of the Education Law and paragraph (a) of subdivision (4) of section 6909 of the Education Law were enacted to protect the public health of New York State by facilitating immunization of individuals against potentially harmful infectious diseases. The proposed rule carries out the intent of the aforementioned statutes by establishing more current and uniform requirements for registered professional nurses when executing non-patient specific orders to administer immunizations. In addition, the proposed rule will increase access to seasonal influenza and measles immunizations, as well as other immunizations, consistent with current United States Centers for Disease Control (CDC) recommendations.

According to the CDC, immunization is one of the best ways to protect infants, children and adults from a variety of potentially harmful diseases.

In 2005, subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education was adopted, which established the criteria for administering specifically identified immunizations by a registered professional nurse pursuant to a non-patient specific order and protocol. However, since that time, immunization standards have changed significantly and new vaccines have been developed that protect the public against additional infectious diseases.

The CDC currently recommends that infants and children be immunized against the following infectious diseases that are not currently explicitly included in subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education: Influenza; Hepatitis A; Meningococcal Infections; and, Pneumococcal Infections. Moreover, the CDC recommends that adults be immunized against Human Papilloma Virus and adults over the age of fifty be immunized against Herpes Zoster, neither of which are presently included subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education.

The proposed amendment of subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education reflect these developments in order enhance the protection of the public health by expanding access to needed vaccines for infants, children and adults.

The proposed amendment of subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education expands access to needed vaccines for infants, children and adults by, inter alia, explicitly allowing a registered professional nurse to immunize persons under age 18, pursuant to a non-patient specific order, against Influenza, Hepatitis A, Meningococcal Disease, Pneumococcal Disease, Varicella, Diphtheria, Influenza, Haemophilus, Influenzae type b, Hepatitis B, Hib, Measles, Mumps, Polio, Rotavirus, Rubella, Tetanus, Pertussis, and Human Papillomavirus. The CDC currently recommends that infants and children be immunized against these same diseases. The proposed amendment further allows registered professional nurses to immunize adults against Herpes Zoster and Human Papilloma Virus, pursuant to a non-patient specific order and protocols, in addition to the diseases listed in the existing regulations.

The proposed amendment of paragraph (1) of subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education establishes a clear definition of "immunizing agents", to ensure that all immunizations administered by registered professional nurses are vaccines and immunizing drugs approved by the federal Food and Drug Administration to immunize persons against specific infectious diseases. This proposed amendment assists in ensuring that the immunizing agents administered by registered professional nurses are safe and effective.

The proposed amendment to paragraph (2) of subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education clarifies provisions relating to orders and protocols and removes a provision requiring an RN be employed or act "as an agent for the Visiting Nurses Association or other equivalent organization..." to immunize infants and children. The removal of this restriction will allow registered professional nurses who work in local health departments and other health settings to immunize children and infants pursuant to a valid non-patient specific order. The proposed amendment requires that the written non-patient specific order contain the following information: (a) the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the non-patient specific order and protocol; (b) the name of the specific immunizing agent to be administered; (c) a protocol for administering the ordered immunizing agent or a specific reference to a separate written protocol for administering the ordered immunizing agent; (d) the period of time that the order is effective, including the beginning and ending dates; (e) a description of the group(s) of persons to be treated, including an age range for these persons; and (f) the name and license number of the registered professional nurse(s) authorized to execute the non-patient specific order and or the name of the entity that employs or contracts with registered professional nurses to execute the non-patient specific order and protocol.

The proposed amendment also requires that the written protocol must, at a minimum, require the registered professional nurse(s) to ensure that: (a) each potential recipient is assessed, pursuant to criteria in the protocol, for conditions that would qualify or preclude him or her from receiving the ordered immunizing agent(s) and receives federally required vaccine information, such as vaccine information statements, if applicable, and instructions on addressing adverse reactions to the vaccine; (b) informed consent for administering the ordered immunizing agent(s) has been obtained pursuant to the criteria in the protocol; (c) the administration of the ordered immunizing agent is documented in the recipient's medical record in accordance with the criteria in the protocol and that documentation relating to immunization is maintained.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule amendment is to establish current and uniform requirements for registered professional nurses when executing non-patient specific orders to administer immunizations. It authorizes registered professional nurses to immunize persons against additional

infectious diseases, as currently recommended by the CDC. These diseases include Influenza, Hepatitis A, Meningococcal Disease and Pneumococcal Disease for infants and children, and Human Papilloma Virus and Herpes Zoster for adults. The proposed amendment will enhance the public health by expanding access to needed immunizations against these and other infectious diseases, by allowing registered professional nurses to immunize persons against these diseases pursuant to patient specific or non-patient specific orders prescribed by a licensed physician or certified nurse practitioner.

4. COSTS:

(a) Costs to State government: There are no additional costs to State government.

(b) Costs to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: There are no mandatory costs to private regulated parties.

(d) Cost to the regulatory agency: There are no additional costs to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any program service, duty, responsibility, or other mandate on local governments.

6. PAPERWORK:

The proposed rule does not impose any reporting, record keeping or other requirements on licensed physicians and certified nurse practitioners, unless they choose to prescribe non-patient specific orders and protocols to permit registered professional nurses to administer immunizations. If a licensed physician or certified nurse practitioner chooses to prescribe such non-patient specific orders and protocols, the proposed rule requires them to, inter alia, issue these orders and protocols in writing.

The proposed rule does not impose any reporting, recordkeeping or other requirements on registered professional nurses, unless they choose to administer immunizations pursuant to non-patient specific orders and protocols issued by a licensed physician or certified nurse practitioner. If registered professional nurses choose to do so, the proposed rule requires them to, inter alia, document the administration of immunizations, and report to the New York State Immunization Information System (NYSIIS) or if administered in the city of New York, to the Citywide Immunization Registry (CIR), if required by section twenty-one hundred sixty-eight of Public Health Law. The proposed rule also requires copies of the non-patient specific orders and protocols to be maintained in the patient's medical records.

7. DUPLICATION:

There are no other state or federal requirements on the subject matter of the proposed rule. Therefore, the amendment does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

The proposed rule is consistent with and furthers the intent of statutory requirements by conforming subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education to the current CDC recommendations for immunizing adults, children and infants to enhance the protection of the public health by expanding access to needed immunizations for infants, children and adults. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

There are no federal standards for authorizing registered professional nurses to administer immunizations pursuant to a non-patient specific order and protocol issued by a licensed physician or certified nurse practitioner. Since there are no applicable federal standards, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that the regulated parties will be able to comply with the proposed rule by the effective date.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to conform subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education to the United States Centers for Disease Control's (CDC) current immunization standards to ensure that registered professional nurses administer immunizations pursuant to non-patient specific orders in accordance with said standards and enhance the protection of the public health by expanding access to needed vaccines for infants, children and adults. The proposed amendment also establishes criteria that conforms with current immunization standards for authorizing registered professional nurses to administer immunizations pursuant to non-patient specific orders and protocols prescribed by a licensed physician or certified nurse practitioner. The proposed amendment further establishes the types of information that must be included in the written non-patient specific orders and the requirements that must be set forth in the written protocols, for registered professional nurses to follow when administering immunizations.

The proposed amendment will not impose any reporting, recordkeeping

or other compliance requirements or costs or have any adverse economic impact on small businesses or local governments. Because it is evident from the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule amendment will apply to all New York State registered professional nurses who administer immunizations pursuant to non-patient specific orders and protocols, including those who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 314,000 registered professional nurses who are registered to practice in New York State, approximately 35,000 reported that their permanent address of record is in a rural county of New York State.

The proposed rule will also apply to all New York State certified nurse practitioners who issue non-patient specific orders and protocols to authorize registered professional nurses to administer immunizations, including nurse practitioners who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 25,000 certified nurse practitioners who are registered to practice in New York State, approximately 3,100 reported that their permanent address of record is in a rural county of New York State.

Additionally, the proposed rule will apply to all New York State licensed physicians who issue non-patient specific orders and protocols to authorize registered professional nurses to administer immunizations, including physicians who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 98,000 licensed physicians who are registered to practice in New York State, approximately 3,000 reported that their permanent address of record is in a rural county of New York State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment to subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education conforms the regulation to the United States Centers for Disease Control’s (CDC) current immunization standards to ensure that registered professional nurses administer immunizations pursuant to non-patient specific orders in accordance with said standards and enhances the protection of the public health by expanding access to needed vaccines for infants, children and adults.

The proposed amendment does not impose any reporting, recordkeeping or other requirements on licensed physicians and certified nurse practitioners, unless they choose to prescribe non-patient specific orders and protocols to permit registered professional nurses to administer immunizations. If a licensed physicians or certified nurse practitioners chooses to prescribe such non-patient specific orders and protocols, the proposed rule requires them to, inter alia, issue these orders and protocols in writing.

The proposed amendment does not impose any reporting, recordkeeping or other requirements on registered professional nurses, unless they choose to administer immunizations pursuant to non-patient specific orders and protocols issued by a licensed physician or certified nurse practitioner. If registered professional nurses choose to do so, the proposed amendment requires them to, inter alia, document the administration of immunizations, and report to the New York State Immunization Information System (NYSIIS) or if administered in the city of New York, to the Citywide Immunization Registry (CIR), if required by section twenty-one hundred sixty-eight of Public Health Law. The proposed rule also requires copies of the non-patient specific orders and protocols to be maintained in the patient’s medical records.

3. COSTS:

The proposed rule will not impose any costs on any licensed physician, certified nurse practitioner, registered professional nurse or other party.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to the current CDC’s immunization standards to ensure that registered professional nurses administer immunizations pursuant to non-patient specific orders in accordance with said standards and enhance the protection of the public health by expanding access to needed vaccines for infants, children and adults. Thus, the Department has determined that the proposed amendment’s requirements should apply to all physicians certified nurse practitioners in New York State who issue such non-patient specific orders and protocols and to all registered nurses in New York State who execute such non-patient specific orders. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of licensed physicians, certified nurse practitioners, and registered professional nurses. These organizations included the New York State Department of Health, the State Board for Nursing and professional associations representing the nursing and medical professions. These groups have members who live or work in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. There is no need for a shorter review period. The State Education Department invites public comment on the proposed five-year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith and must be received within 60 days of the State Register publication date of the Notice.

Job Impact Statement

It is not anticipated that the proposed rule will impact jobs or employment opportunities. This is because the proposed amendment conforms subdivision (a) of section 64.7 of the Regulations of the Commissioner of Education to the United States Centers for Disease Control’s (CDC) current immunization standards to ensure that registered professional nurses administer immunizations pursuant to non-patient specific orders in accordance with said standards and enhances the protection of the public health by expanding access to needed vaccines for infants, children and adults. The proposed rule amendment also establishes criteria that conforms with current immunization standards for authorizing registered professional nurses to administer immunizations pursuant to non-patient specific orders and protocols prescribed by a licensed physician or certified nurse practitioner.

The proposed amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities attributable to its adoption or only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

EMERGENCY RULE MAKING

Principle-Based Reserving

I.D. No. DFS-52-18-00001-E

Filing No. 159

Filing Date: 2019-03-06

Effective Date: 2019-03-06

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

Action taken: Addition of Part 103 (Regulation 213) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 102, 201, 202, 301, 302; Insurance Law, sections 301, 4217 and 4517

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

Specific reasons underlying the finding of necessity: The Legislature added a new Insurance Law § 4217(g) to allow principle-based reserving (“PBR”) for certain individual and group life insurance policies and annuity contracts beginning in 2019. This rule is necessary to make clear that the Superintendent of Financial Services (“Superintendent”) may require a life insurance company or fraternal benefit society (collectively, “life insurer”) to change an assumption or method that in the Superintendent’s opinion is necessary to comply with the valuation manual adopted by the Superintendent and § 4217(g), and that the life insurer must adjust the reserves as the Superintendent requires.

Since the bill that enacted Insurance Law § 4217(g) took effect immediately, it is imperative that this rule be promulgated on an emergency basis for the public’s general welfare.

Subject: Principle-Based Reserving.

Purpose: To allow principal-based reserving for certain individual and group life insurance policies and annuity contracts.

Text of emergency rule: PRINCIPLE-BASED RESERVING**§ 103.1 Applicability.**

This part shall apply to individual and group life insurance policies and annuity contracts issued on or after the operative date of the valuation manual as prescribed by the superintendent by regulation.

§ 103.2 Superintendent's authority to require reserve adjustments.

(a) The superintendent may require a life insurance company to change an assumption or method that in the superintendent's opinion is necessary to comply with the requirements of the valuation manual or Insurance Law section 4217(g), and the life insurance company shall adjust the reserves as required by the superintendent. The superintendent may take other disciplinary action as permitted by the Insurance Law, Financial Services Law, and any other applicable laws and regulations.

(b) For purposes of this Part, "valuation manual" shall have the meaning set forth in Insurance Law section 4217(g)(5).¹

¹ The 2018 Valuation Manual, published by the National Association of Insurance Commissioners, is hereby incorporated by reference in this Part. The 2018 Valuation Manual is readily available without charge at the following internet address: https://www.naic.org/documents/prod_serv_2018_valuation_manual.pdf. The 2018 Valuation Manual is also available for public inspection and copying at the New York State Department of Financial Services, One State Street, New York, NY 10004.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-52-18-00001-EP, Issue of December 26, 2018. The emergency rule will expire May 4, 2019.

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: Joana.Lucashuk@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 102, 201, 202, 301 and 302 and Insurance Law §§ 301, 4217, and 4517.

Financial Services Law § 102 establishes the Department of Financial Services ("DFS") and sets forth goals for DFS to accomplish.

Financial Services Law § 201 sets forth a declaration of policy, Financial Services Law § 202 establishes the office of the Superintendent of Financial Services ("Superintendent"), and Financial Services Law § 301 sets forth the Superintendent's powers.

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

Insurance Law § 4217 sets forth rules for the valuation of insurance policies and contracts. Insurance Law § 4217(g) requires authorized life insurance companies and fraternal benefit societies (collectively, "life insurers") to use principle-based reserving ("PBR") for certain individual and group life insurance policies and annuity contracts upon the Superintendent's approval of the National Association of Insurance Commissioners' ("NAIC's") valuation manual (the "Manual"), subject to the Superintendent adopting any amendment to the Manual by regulation.

Insurance Law § 4517 makes Insurance Law § 4217 applicable to the valuation of life insurance and annuity certificates issued by fraternal benefit societies.

2. Legislative objectives: Insurance Law § 4217 sets forth rules for the valuation of insurance policies and contracts. In December 2018, Governor Andrew M. Cuomo signed into law a bill that added a new Insurance Law § 4217(g) to allow PBR for certain individual and group life insurance policies and annuity contracts beginning in 2019.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law § 4217(g) when it adopted PBR for life insurers, by making clear that the Superintendent may require a life insurer to change an assumption or method that in the Superintendent's opinion is necessary to comply with the valuation manual adopted by the Superintendent and § 4217(g), and that the life insurer must adjust the reserves as the Superintendent requires.

3. Needs and benefits: Life insurers set aside funds (called "reserves") to pay insurance claims when they become due. Insurance Law § 4217 and regulations promulgated thereunder set forth rules surrounding the setting aside of reserves. Insurance Law § 4517 makes Insurance Law § 4217 applicable to the valuation of life insurance and annuity certificates issued by fraternal benefit societies. The NAIC revised its model Standard Valuation Law in 2009 to establish PBR. PBR is designed to allow life insurers to hold reserves based on credible experience that is more closely tailored to the insurers' particular products, within certain strict guidelines. According to the NAIC, as of October 31, 2017, 47 states representing 85.9% of premium have enacted legislation implementing PBR.

Beginning January 1, 2020, the 2009 revisions to the NAIC's Standard Valuation Law will become an accreditation standard. NAIC accreditation is a certification that a state receives once it demonstrates that it has met and continues to meet certain legal, financial, and organizational standards. The purpose of the NAIC accreditation program is to ensure effective insurer financial solvency regulation across the United States.

Insurance Law § 4217(g) authorizes the Superintendent to replace the existing formulaic rules for calculating life insurer reserves with the PBR paradigm established by the NAIC. Section 4217(g) was modeled, in part, on the NAIC's Standard Valuation Law. Although § 4217(g) does not contain every provision that appears in the Standard Valuation Law, the law grants the Department and the Superintendent the same or greater authority than if it had included all of the provisions included in the Standard Valuation Law. Section 11(G) of the Standard Valuation Law is one of the provisions not included in § 4217(g). Newly enacted § 4217(g)(8)(B) – which authorizes the Superintendent to deviate "from the reserve standards, valuation methods, assumptions, and related requirements in the valuation manual, including for individual companies" – provides the same substantive authority as § 11(G).

Recognizing that a state's enactment of a satisfactory PBR law will become an NAIC accreditation standard starting January 1, 2020 and that new Insurance Law § 4217(g) does not reduce the Superintendent's authority to adjust reserves, both the Life Insurance Council of New York and the Superintendent believe that the language in § 11(G) of the Standard Valuation Law should be included in a stand-alone rule.

4. Costs: This rule may impose compliance costs on life insurers because an insurer must adjust its reserves as the Superintendent requires if necessary to comply with the Manual and Insurance Law § 4217(g). This is a consequence of new Insurance Law § 4217(g), which requires that the minimum standard for the valuation of certain life insurance policies and annuity contracts will be the standard prescribed in the Manual as adopted by the Superintendent. However, under the law, a domestic insurance company and a fraternal benefit society that only writes business in New York may, with the Superintendent's approval, obtain an exemption for specific product forms or product lines.

DFS also may incur costs for the implementation and continuation of this rule, because DFS will need to monitor reserves to ensure conformance with the Manual and Insurance Law § 4217(g). However, any additional costs incurred should be minimal and DFS should be able to absorb the costs in its ordinary budget.

This rule does not impose compliance costs on any local government.

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

6. Paperwork: This rule does not impose any reporting requirements, including forms and other paperwork.

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

8. Alternatives: There were no significant alternative proposals to consider.

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

10. Compliance schedule: A life insurer must comply with the rule upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

The Department of Financial Services ("DFS") finds that this new part will not impose any adverse economic impact or compliance requirements on small businesses or local governments. The basis for this finding is that this rule is directed at life insurance companies and fraternal benefit societies (collectively, "life insurers"), none of which are local governments or come within the definition of "small business" as defined in State Administrative Procedure Act § 102(8). DFS reviewed filed reports on examination and annual statements of such life insurers and concluded that none of these life insurers come within the definition of "small business" because there are none that are both independently owned and have fewer than 100 employees.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Life insurance companies and fraternal benefit societies (collectively, "life insurers") 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 does not impose additional reporting, recordkeeping, or other compliance requirements. A life insurer in a rural area may need to retain professional services, such as actuaries, to comply with this rule.

3. Costs: This rule may impose compliance costs on life insurers, including life insurers in rural areas, because a life insurer must adjust its reserves as the Superintendent of Financial Services ("Superintendent") requires if

necessary to company with the National Association of Insurance Commissioners' valuation manual (the "Manual") and Insurance Law § 4217(g). This is a consequence of new Insurance Law § 4217(g), which requires that the minimum standard for the valuation of certain life insurance policies and annuity contracts will be the standard prescribed in the Manual as adopted by the Superintendent. However, under the law, a domestic insurance company and a fraternal benefit society that only writes business in New York may, with the Superintendent's approval, obtain an exemption for specific product forms or product lines.

4. Minimizing adverse impact: This rule uniformly affects life insurers 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: Life insurers in rural areas will have an opportunity to participate in the rule-making process when the notice of proposed rule-making is published in the State Register and posted on the Department of Financial Services' website.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. The rule merely implements Insurance Law § 4217(g) by making clear that the Superintendent of Financial Services ("Superintendent") may require a life insurance company or fraternal benefit society to change an assumption or method that in the Superintendent's opinion is necessary to comply with the valuation manual adopted by the Superintendent and § 4217(g), and that the life insurance company or fraternal benefit society must adjust the reserves as the Superintendent requires.

Assessment of Public Comment

The agency received no public comment.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Cash 4 Life Multi-Jurisdiction Lottery Game

I.D. No. SGC-13-19-00023-P

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

Proposed Action: Amendment of section 5007.15 of Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1612(a), 1617; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Cash 4 Life multi-jurisdiction lottery game.

Purpose: To provide for daily Cash 4 Life drawings to raise additional revenue for education.

Text of proposed rule: Section 5007.15 of Title 9 of the NYCRR is amended to read as follows:

§ 5007.15. Cash 4 Life.

(a) Definitions. The following definitions apply to the Cash 4 Life:

* * *

(13) Purchaser means a player of the Cash 4 Life game who purchases a ticket within New York State in accordance with Cash 4 Life rules and New York State governing laws and regulations.

* * *

(c) Game description.

(2) The commission reserves the right to change the field of numbers in the Cash 4 Life game. Any change in the field of numbers shall be [publicly] announced publicly by the commission in advance of the effective date of such change.

(3) A Cash 4 Life subscription sales program may be offered at the discretion of the commission. No subscription for the Cash 4 Life game shall remain in effect longer than one year.

* * *

(d) Play characteristics and restrictions.

* * *

(2) A multi-draw Cash 4 Life ticket may be purchased for a specified number of future drawings. Such multi-draw ticket shall not be considered a subscription pursuant to paragraph (3) of subdivision (c) of this section or Part 5005 of this subchapter.

(3) A Cash 4 Life ticket may not be purchased [in any other state] anywhere by any commission employee or any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of abode of any commission employee.

(e) Drawings. [Cash 4 Life drawings shall be conducted twice per week] Cash 4 Life drawings shall be conducted each calendar day at a time and at a location authorized by the party lotteries. The [day,] time, frequency and location of the Cash 4 Life drawings may be changed following a public announcement.

(f) Pool, prize structure and probability of winning.

(1) Prize pool. The prize pool for the aggregate of all prize categories shall consist of 55 percent of the sales for each drawing period after the prize reserve accounts are funded to predetermined amounts. If the Cash 4 Life game is no longer offered in New York State, any amount remaining in the prize pool at the end of the game shall be carried forward to a replacement game or used in a manner as permitted by New York State law.

(2) Prize reserve accounts. The prize reserve account may be adjusted as needed to maintain an approved maximum balance and shares from each of the party lotteries as specified by the party lotteries. If the Cash 4 Life game is no longer offered in New York State, any amount remaining in a prize reserve account at the end of the game shall be carried forward to a replacement prize reserve account or used in a manner as permitted by New York State law.

(3) Prize payout and structure. There are nine prize levels in the Cash 4 Life game. The prize payout percentage and prize structure are as follows, unless there are multiple winners in a prize category, in which case prize amounts may be reduced as set forth in subdivision (h) of this section:

* * *

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601, 1604, 1612(a) and 1617 and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1612(a) describes the distribution of revenues for a joint, multi-jurisdiction, and out-of-state lottery. Section 1617 of such law authorizes the Commission to enter into an agreement with a government-authorized group of one or more other jurisdictions for the operation and administration of such a joint, multi-jurisdiction and out-of-state lottery.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. Legislative objectives: To raise additional revenue for education through the offering of lottery games that are attractive to customers.

3. Needs and benefits: This rulemaking will allow New York Lottery customers to purchase tickets for daily drawings of the Cash 4 Life multi-jurisdiction lottery game instead of only two drawings per week as offered presently. The Commission and the other state-operated lotteries that offer the Cash 4 Life game believe that daily Cash 4 Life drawings will increase ticket sales and revenue earned for each lottery's mission program, including aid to education in the State of New York.

The Cash 4 Life game has been successful following its introduction in June 2014. The New York Lottery has sold approximately \$480 million in Cash 4 Life tickets since the game's inception, and Cash 4 Life sales have contributed approximately \$145 million in aid to education for the State of New York. The New York Lottery's average weekly sales for Cash 4 Life since the game was introduced are \$1.9 million per week.

Research suggests that holding Cash 4 Life drawings daily will result in an incremental sales increase for state-operated lotteries that offer Cash 4

Life. The Commission asked IGT Global Solutions Corporation (“IGT”), the Commission’s full-service lottery system operator, to conduct a study regarding the impact that switching from two Cash 4 Life drawings per week to drawings every day will have on New York Lottery Cash 4 Life ticket sales. IGT concluded that incremental spending forecasts are positive for Cash 4 Life among frequent players. IGT further concluded that incremental spending forecasts are even more positive among less frequent Cash 4 Life players if the change to daily drawings is made, which indicates an opportunity to bring in new dollars. Regarding the possibility of cannibalization of other lottery games, IGT predicted that a greater percentage of the Cash 4 Life ticket sales increase that is anticipated will come from new dollars spent on New York Lottery tickets rather than detracting from ticket sales for existing lottery games.

IGT’s conclusions about Cash 4 Life sales trends are largely consistent with the Commission’s assumptions about how daily drawings will affect overall Cash 4 Life ticket sales. The Commission also predicts that weekly Cash 4 Life sales totals will increase if the change to daily drawings is made and that daily Cash 4 Life drawings will be appealing to new players in addition to existing players.

The Cash 4 Life multi-jurisdiction lottery game is also offered in Florida, Georgia, Indiana, Maryland, New Jersey, Pennsylvania, Tennessee and Virginia. Other state-operated lotteries may soon offer Cash 4 Life as well.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. Existing lottery agents will be able to sell these tickets the same as they do other lottery games.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated. The Commission can administer this game using existing resources.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Commission’s experience operating State Lottery games for more than 50 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements. Lottery agents will be able to report the sales of this game using the same electronic reporting system.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending this regulation is to no longer offer the Cash 4 Life game in the State of New York. This alternative was rejected because Cash 4 Life has proven to be a successful game, and the revenue that it earns for aid to education would not be easily replaced.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by Federal government.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

The rulemaking will allow New York Lottery customers to purchase tickets for daily drawings of the Cash 4 Life multi-jurisdiction lottery game instead of only two drawings per week as offered presently by the New York State Gaming Commission, operator of the New York Lottery. This amendment will impose no significant technological changes. No local government activity is involved. Lottery sales agents offer new or different lottery games only in order to increase sales. Customers are not required to play. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The change to daily drawings of the Cash 4 Life multi-jurisdiction lottery game will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rulemaking.

Office of General Services

NOTICE OF ADOPTION

Service-Disabled Veteran-Owned Business Enterprises

I.D. No. GNS-46-18-00001-A

Filing No. 156

Filing Date: 2019-03-06

Effective Date: 2019-03-27

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

Action taken: Amendment of sections 252.1 and 252.2 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 200 and 369-i(5)

Subject: Service-Disabled Veteran-Owned Business Enterprises.

Purpose: To establish standards, procedures and criteria with respect to the Service-Disabled Veteran-Owned Business Enterprise program.

Text or summary was published in: the November 14, 2018 issue of the Register, I.D. No. GNS-46-18-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Paula B. Hanlon, Esq., Office of General Services, 41st Floor, Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 474-5607, email: RegsReceipt@ogs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Higher Education Services Corporation

EMERGENCY RULE MAKING

NYS Part-Time Scholarship (PTS) Award Program

I.D. No. ESC-13-19-00006-E

Filing No. 161

Filing Date: 2019-03-07

Effective Date: 2019-03-07

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

Action taken: Addition of section 2201.20 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 667-c-1

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation’s (HESC) Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the 2017-18 academic year, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students pursuing their undergraduate studies at a community college at the State University of New York or the City University of New York. Decisions on applications for student financial aid programs are customarily made prior to the beginning of the term. Therefore, it is critical that the terms of the Program as provided in the regulation be effective immediately in order for HESC to begin processing scholarship applications. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the Program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: NYS Part-Time Scholarship (PTS) Award Program.

Purpose: To implement the NYS Part-time Scholarship (PTS) Award Program.

Text of emergency rule: New section 2201.20 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.20 *New York State Part-time Scholarship (PTS) Award Program.*

(a) *Definitions. As used in Education Law, section 667-c-1 and this section, the following terms shall have the following meanings:*

(1) *Good academic standing shall mean having a minimum cumulative grade point average of 2.0.*

(2) *Interruption of study shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, death of a family member, medical leave, military service, service in the Peace Corps or parental leave.*

(3) *Program shall mean the New York State Part-time Scholarship (PTS) Award Program codified in Education Law, section 667-c-1.*

(b) *Eligibility. An applicant must satisfy the requirements of Education Law, section 667-c-1 and the general eligibility requirements provided in Education Law, section 661.*

(c) *Administration.*

(1) *Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.*

(2) *For purposes of determining priority, financial need shall be established based on the federal expected family contribution reflected on the applicant's federal student aid report, with the lowest expected family contribution evidencing the greatest financial need.*

(3) *Recipients of an award shall:*

(i) *request payment annually at such times, on forms and in a manner specified by the corporation;*

(ii) *provide any information necessary for the corporation to determine compliance with the program's requirements.*

(4) *The corporation shall maintain data relating to the performance of award recipients including, but not limited to, degree completion rates. All such data shall be deemed confidential and the corporation shall only disclose aggregate data unless otherwise required by law.*

(d) *Awards.*

(1) *The amount of the award shall be determined in accordance with section 667-c-1 of the education law.*

(2) *A recipient of an award must remain in good academic standing, as defined in this section, and remain continuously enrolled (excluding summer and winter terms) to be eligible for payment of future awards, excluding any allowable interruption of study.*

(3) *Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time after verification and certification by the institution of the recipient's grade point average and other eligibility requirements.*

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 June 4, 2019.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: reg.comments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's (HESC) statutory authority to promulgate regulations and administer the NYS Part-time Scholarship (PTS) Award Program (Program) is codified within Article 14 of the Education Law. In particular, Part KKK of Chapter 59 of the Laws of 2017 created the Program by adding a new section 667-c-1 to the Education Law. Subdivision 6 of section 667-c-1 of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting

and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC, and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 667-c-1 to create the Program, which is aimed at reducing tuition expenses for students who attend a State University of New York (SUNY) or City University of New York (CUNY) community college.

Needs and benefits:

Many studies have underscored the necessity of a college degree in today's global economy. The Center on Education and the Workforce (CEW) at Georgetown University found that by 2020, 65 percent of all jobs will require some form of postsecondary education or training, compared to 59 percent of jobs in 2010. The CEW report finds that having a skilled workforce is critical if the United States is to "remain competitive, attract the right type of industry, and engage the right type of talent in a knowledge-based and innovative economy." At the current pace, the United States will fall short of its skilled workforce needs by 5 million workers. Furthermore, the disparity in earning potential between high school graduates and college graduates has never been greater, nor has the student loan debt – which stands at \$1.3 trillion – being carried by those who have pursued a postsecondary education.

Recognizing the growing need for workers with postsecondary education and training, the wage earnings benefits for those with training beyond a high school diploma, the rapidly rising college costs and mounting student loan debt, this Program awards students attending a public community college up to \$1,500 per semester to offset their tuition costs. To be eligible for a Program award, students must be enrolled in at least six but less than 12 credits per semester at a SUNY or CUNY community college and maintain a grade point average of 2.0. Payments will be made directly to colleges on behalf of students upon certification of their eligibility at the end of the academic term.

Costs:

a. The estimated cost to the agency for the implementation of, or continuing compliance with this rule is \$719,344.

b. The maximum cost of the program to the State is \$3,129,000 in the first year based upon budget estimates.

d. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application together with supporting documentation for each year they wish to receive an award up to and including two consecutive years of eligibility.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals at SUNY and CUNY with regard to this Program. Several alternatives were considered in the drafting of this regulation, such as the definition of financial need. Given the statutory language as set forth in section 667-c-1 of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Emergency Rule Making, seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This rule implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergradu-

ate studies at a community college at the State University of New York or City University of the State of New York. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.20 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts by providing community college students with additional tuition award benefits. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

EMERGENCY RULE MAKING

New York State Masters-in-Education Teacher Incentive Scholarship Program

I.D. No. ESC-13-19-00007-E

Filing No. 162

Filing Date: 2019-03-07

Effective Date: 2019-03-07

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

Action taken: Addition of section 2201.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-f

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2016 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students attending a New York State public institution of higher education who pursue a graduate program of study in an education program leading to a career as a teacher in public elementary or secondary education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Masters-in-Education Teacher Incentive Scholarship Program.

Purpose: To implement the New York State Masters-in-Education Teacher Incentive Scholarship Program.

Text of emergency rule: New section 2201.17 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.17 New York State Masters-in-Education Teacher Incentive Scholarship Program.

(a) *Definitions. As used in section 669-f of the Education Law and this section, the following terms shall have the following meanings:*

(1) *Academic excellence shall mean the attainment of a cumulative grade point average of 3.5 or higher upon completion of an undergraduate program of study from a college or university located within New York State.*

(2) *Approved master's degree in education program shall mean a program registered at a New York State public institution of higher education pursuant to Part 52 of the Regulations of the Commissioner of Education.*

(3) *Award shall mean a New York State Masters-in-Education Teacher Incentive Scholarship Program award pursuant to section 669-f of the New York State education law.*

(4) *Classroom instruction shall mean elementary and secondary education instruction, as required by the New York State Education Department, including enrichment and supplemental instruction that may be offered to a subset of students. Classroom instruction shall not include support services, such as counseling, speech therapy or occupational therapy services.*

(5) *Elementary and secondary education shall mean pre-kindergarten through grade 12 in a public school recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of the education law.*

(6) *Full-time study shall mean the number of credits required by the institution in each term of the approved master's degree in education program. A recipient may complete fewer credits than required for full-time study if he or she is in their last term and fewer credit hours are necessary to complete their degree program. In this case, the award amount shall be based on the tuition reported by the institution.*

(7) *Initial certification shall mean any certification issued pursuant to part 80 of this title which allows the recipient to teach in a classroom setting on a full-time basis.*

(8) *Interruption in graduate study or employment shall mean an allowable temporary period of leave for a definitive length of time due to circumstances approved by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.*

(9) *Program shall mean the New York State Masters-in-Education Teacher Incentive Scholarship Program codified in section 669-f of the education law.*

(10) *Public institution of higher education shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.*

(11) *Rank shall mean an applicant's position, relative to all other applicants, based on cumulative grade point average upon completion of an undergraduate program of study from a college or university located within New York State.*

(12) *School year shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.*

(13) *Successful completion of a term shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-f of the Education Law; (ii) maintained full-time status as defined in this section; and (iii) possessed a cumulative grade point average of 3.5 or higher as of the date of the certification by the institution.*

(14) *Teach in a classroom setting on a full-time basis shall mean continuous employment providing classroom instruction in a public elementary or secondary school, including charter schools, Boards of Cooperative Educational Services (BOCES) and public pre-kindergarten programs, located within New York State, for at least 10 continuous months, each school year, for a number of hours to be determined by the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school.*

(b) *Eligibility. An applicant must satisfy the eligibility requirements contained in both sections 669-f and 661 of the education law, provided however that an applicant for this Program must meet the good academic standing requirements contained in section 669-f of the education law.*

(c) *Priorities. If there are more applicants than available funds, the following provisions shall apply:*

(1) *First priority shall be given to applicants who have received payment of an award pursuant to section 669-f of the education law for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. First priority shall include applicants who*

received payment of an award pursuant to section 669-f of the education law, were subsequently granted an interruption in graduate study by the corporation for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) Second priority shall be given to up to five hundred new applicants, within the remaining funds available for the Program, if any. If there are more applicants than available funds, recipients shall be chosen by rank, starting at the applicant with the highest cumulative grade point average beginning in the 2016-17 academic year. In the event of a tie, distribution of any remaining funds shall be done by lottery.

(d) Administration.

(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) request payment at such times, on forms and in a manner specified by the corporation;

(iii) receive such awards for not more than four academic terms, or its equivalent, of full-time graduate study leading to certification as a public elementary or secondary classroom teacher, including charter schools, excluding any allowable interruption of study;

(iv) facilitate the submission of information from their employer attesting to the recipient's job title, the full-time work status of the recipient, and any other information necessary for the corporation to determine compliance with the program's employment requirements on forms and in a manner prescribed by the corporation; and

(v) provide any other information necessary for the corporation to determine compliance with the program's requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-f of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's grade point average and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-f of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this capitalized amount shall continue to accrue and be calculated using simple interest until the amount is paid in full.

(5) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or take such other appropriate action.

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 June 4, 2019.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision

6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objectives and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship Program" (Program). The objective of this Program is to incent New York's highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master's degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master's degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master's degree. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

b. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

c. The maximum cost of the Program to the State is \$1.5 million in the first year, based upon budget estimates.

d. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (c) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application, together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with supporting documentation for up to two years of award payments. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal undergraduate unsubsidized Stafford loan rate in the event that the award is converted to a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Niagara Frontier Transportation Authority

NOTICE OF ADOPTION**Procurement Guidelines of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc.****I.D. No.** NFT-01-19-00001-A**Filing No.** 155**Filing Date:** 2019-03-06**Effective Date:** 2019-03-27

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

Action taken: Amendment of Part 1159 of Title 21 NYCRR.**Statutory authority:** Public Authorities Law, section 1299-t**Subject:** Procurement Guidelines of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc.**Purpose:** To amend the Procurement Guidelines to reflect changes in the law, clarifying provisions, and changes in signing authority level.**Text or summary was published** in the January 2, 2019 issue of the Register, I.D. No. NFT-01-19-00001-P.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** Michelle Maniccia, Esq., Niagara Frontier Transportation Authority, 181 Ellicott St., Buffalo, New York 14203, (716) 855-7300, email: michelle_maniccia@nfta.com**Assessment of Public Comment**

The agency received no public comment.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED**RULE MAKING****NO HEARING(S) SCHEDULED****Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD****I.D. No.** PDD-13-19-00008-EP**Filing No.** 163**Filing Date:** 2019-03-07**Effective Date:** 2019-03-07

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

Proposed Action: Amendment of Subpart 635-11 of Title 14 NYCRR.**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a) and 16.00**Finding of necessity for emergency rule:** Preservation of public health, public safety and general welfare.**Specific reasons underlying the finding of necessity:** The emergency adoption of amendments that allow individuals to be enrolled into the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plan, through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system. FIDA-IDD plans provide enhanced care coordination for individuals who need coordination of both Medicare health benefits and developmental disability services funded by Medicaid. Persons who are unable to enroll themselves in a FIDA-IDD plan will be unfairly precluded from participation in this dual care coordination program.

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

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

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

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

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

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

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

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

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

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

The regulations specify that if the agency or sponsoring agency does not agree with the request for a different PDP, the agency or sponsoring agency shall, among other things, inform the advocate or correspondent that he or she may appeal directly to the OPWDD Commissioner.

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

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

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

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

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

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

The regulations specify that no CEO, officer, designee, or employee of

an agency or sponsoring agency shall solicit, accept or receive from a PDP, pharmacy or contractor of a PDP or pharmacy, for personal use or benefit any payment, discount, or other remuneration in consideration of, or as a result of, enrolling the person in a PDP.

The regulations specify that no CEO, officer, designee, or employee of an agency or sponsoring agency shall charge, accept or receive payment from the person, family, or anyone else for enrolling the person in a PDP, providing advice and assistance in choosing a PDP or for acting for the person in the Part D review process.

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

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

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

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

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

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

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

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 4, 2019.

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

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

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

2. Legislative Objectives: The regulations further legislative objectives embodied in sections 13.07, 13.09(b), 13.15(a) and 16.00 of the Mental

Hygiene Law. The regulations authorize certain parties to enroll individuals in the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) when the individuals lack capacity to enroll themselves. FIDA-IDD plans provide enhanced care coordination for individuals who need coordination of both Medicare health benefits and Medicaid developmental disability services.

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

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

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

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

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

The regulations correct a mistake in 635-11.2 that allowed the DDSOO director, when exercising a review function for a beneficiary in a PDP, to appeal to himself or herself under certain circumstances. The regulation has been amended to allow the individual to appeal directly to the OPWDD Commissioner. The regulation also permits the appointment of an individual outside the agency to conduct the appeal.

The regulations permit the Consumer Advisory Board, Willowbrook Class to make enrollment decisions and act in plan review processes for all Willowbrook class members according to the process described in the regulation, as a last resort prior to defaulting to enrollment by the applicable CEO.

4. Costs:

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

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

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

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

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

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

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

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

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

10. Compliance Schedule: OPWDD is planning to adopt the amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The regulations were discussed with and reviewed by representatives of providers in advance of this proposal. OPWDD expects that providers will be in compliance with the requirements at the time of their effective date.

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

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

Job Impact Statement

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

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

Public Service Commission

NOTICE OF ADOPTION

IRM for the 2019-2020 Capability Year

I.D. No. PSC-52-18-00010-A

Filing Date: 2019-03-06

Effective Date: 2019-03-06

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

Action taken: On 3/6/19, the PSC adopted an order adopting the Installed

Reserve Margin of 17.0% for the New York Control Area for the Capability Year beginning May 1, 2019 and ending on April 30, 2020.

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

Subject: IRM for the 2019-2020 Capability Year.

Purpose: To adopt an IRM of 17.0% for the New York Control Area for the 2019-2020 Capability Year.

Substance of final rule: The Commission, on March 6, 2019, adopted an Installed Reserve Margin of 17.0% established by the New York State Reliability Council for the New York Control Area for the Capability Year from May 1, 2019 through April 30, 2020, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

(07-E-0088SA13)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New Commission Requirements for Gas Company Operator Qualification Programs

I.D. No. PSC-13-19-00010-P

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

Proposed Action: The Commission is considering the recommendations of a Department of Public Service Staff White Paper on new requirements for gas company operator qualification programs.

Statutory authority: Public Service Law, sections 65 and 66

Subject: New Commission requirements for gas company operator qualification programs.

Purpose: To make pipelines safer with improved training of workers who perform construction and repairs on natural gas facilities.

Substance of proposed rule: The Public Service Commission (Commission) is considering the recommendations of a Department of Public Service Staff (DPS Staff) White Paper on new requirements for how local distribution companies (LDCs, operators) train and evaluate their employees and contractors who perform construction and repairs on covered tasks, as defined in 16 NYCRR § 255.3(9), on natural gas and other pipelines.

The proposal is made in Cases 14-G-0212 and 17-G-0318, in response to contractor cheating on written Operator Qualification tests and the subsequent re-digs of work completed by contractors who had access to test questions and answers before taking qualification tests; the re-digs revealed improper installation practices. In a White Paper, issued February 12, 2019, the DPS Staff recommends the Commission order operators to make changes to their respective Operator Qualification Programs to improve the knowledge, skills, and abilities of workers who perform construction and repairs on natural gas and other pipelines.

The White Paper includes two appendices: a proposed Model Plan and proposed Best Practices. The DPS Staff White Paper proposals include, but are not limited to, the following changes to each local distribution company's Operator Qualification Program:

A. Training: (1) operators must provide sufficient training to ensure that any worker performing a covered task has the necessary knowledge, skills, and abilities to perform the task; (2) contractors must receive the same training as operator personnel; (3) all training must include direct, hands-on training on the procedures and equipment of the operator for whom the worker will be completing tasks; (4) if a worker fails any evaluation, additional training must occur; (5) in no case shall an improperly qualified individual perform covered tasks involving critical functions (e.g., pressure regulation, etc.), even if the worker is directly supervised by a properly qualified individual; (6) operators must develop and implement an adequate "management of change" program and train workers in the program.

B. Worker Evaluations: (1) local distribution companies must evaluate worker competency for each covered task in which the worker will be deemed qualified through both a written (or oral) examination and a practical

evaluation, which includes observation during performance on the job or during simulation(s); (2) operators must conduct and document regular re-assessments and re-qualification of workers at specified intervals for each covered task; (3) operator evaluations must include a documented process for ensuring that only Operator Qualified individuals, or individuals being directed and observed by Operator Qualified individuals, are performing in-scope tasks; (4) operator qualification shall not be determined by written testing alone; (5) observation of on-the-job performance shall not be used as a sole method of evaluation; (6) the completion of plastic fusions always will be considered a covered task and subject to Operator Qualification requirements; (7) an employee or contractor completing work on a pipeline must first demonstrate the technical knowledge necessary to identify abnormal operating conditions (AOCs) and other covered tasks through a hands-on demonstration of their skills; (8) to pass a written or oral test, all abnormal operating condition questions must be answered correctly.

C. Test Security: To eliminate the opportunity for cheating, security measures must be required for written evaluations, including, but not limited to: (1) written evaluations must take place at either the operator's facility or a third-party testing center (except for following narrow exception); (2) in the rare circumstance when testing needs to occur at a specialty contractor's location, the test must be administered and proctored by the operator; (3) among other restrictions, any electronic devices used to take a test must prohibit the individual from leaving the test page during the test; (4) test questions must evaluate proficiency on working within the procedures and on the type of equipment used by the operator for whom the workers will be performing covered tasks; and (5) contractors must take the same written evaluation as the operator personnel for whom the contractor will work.

D. Practical Evaluations: (1) Practical evaluations would be administered with one evaluator per each worker being evaluated; (2) a contractor's Operator Qualification Program could be used only after the operator demonstrates that the contractor's Operator Qualification Program meets or exceeds the requirements of the operator's Operator Qualification Program and that it conforms to the procedures and equipment used by the operator; (3) evaluators shall not provide guidance during practical evaluations.

E. Program Effectiveness: An operator shall (1) conduct a program effectiveness review once each calendar year, with the intervening period between such reviews not to exceed 15 months; (2) measure a program's effectiveness by (a) confirming that the Operator Qualification program is being implemented and executed as written; and (b) adopting amendments to the program to include any changes necessary to address the findings of the program's effectiveness review; (3) keep a record of the number of times an individual who performs a covered task(s) adversely affects the safety or integrity of a pipeline due to deficiencies, including, but not limited to: (a) the individual's training was inadequate for the specific covered task(s); (b) a change made to a covered task(s) process was not adequately communicated to the individual; or (c) the individual failed to recognize an abnormal operating condition.

The full text of the White Paper and the record of the proceedings may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(14-G-0212SP6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Modifications to the Gas Cost Factor and Daily Delivery Service Programs

I.D. No. PSC-13-19-00011-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 proposal filed by Consolidated Edison Company of New York, Inc. to modify its gas tariff schedule, P.S.C. No. 9, regarding the Gas Cost Factor and Daily Delivery Service Program, P.S.C. No. 9—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Modifications to the Gas Cost Factor and Daily Delivery Service Programs.

Purpose: To ensure safe and reliable service for customers at just and reasonable rates.

Substance of proposed rule: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) on March 4, 2019, to amend its gas tariff schedule, P.S.C. No. 9.

The Company proposes to recover the supply costs associated with its Non-Pipeline Solutions Portfolio, specifically, the costs of trucked and stored compressed natural gas (CNG) and liquefied natural gas (LNG). Con Edison proposes to recover these costs through the Gas Cost Factor (GCF) and Daily Delivery Service (DDS). The Company proposes modifications to: (1) the definitions of Fixed Gas Costs in the GCF to include CNG and LNG project development costs, including abandoned projects; (2) Tier 3 - Peaking Service of the DDS to recover CNG and LNG project development costs, including costs for abandoned projects, through its demand price; (3) the commodity price of Tier 3 to include the variable costs of trucked and stored LNG and CNG; and (4) security requirements for the DDS service for Marketers participating in the Purchase of Receivables Program. Con Edison also proposes clarifying changes to the GCF and DDS tariff leaves regarding costs associated with CNG and LNG supplies. The proposed amendments have an effective date of July 1, 2019.

The full text of the proposal 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.

(17-G-0606SP6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Paperless Billing Credit

I.D. No. PSC-13-19-00012-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 proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to modify its gas tariff schedule, P.S.C. No. 12, to revise the paperless billing credit for customers that choose paperless billing.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Paperless billing credit.

Purpose: To provide just and reasonable rates.

Substance of proposed rule: The Commission is considering a tariff proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY or the Company) on March 1, 2019, to amend its gas tariff schedule, P.S.C. No. 12 – Gas.

KEDNY proposes to revise the paperless billing credit for customers that choose paperless billing from \$0.49 per service period to \$0.41 per service period. The credit represents the difference between the cost to produce a paper bill versus producing an electronic bill. Since the initial paperless bill credit rate was developed, the Company has implemented a new electronic billing solution allowing the customer's bill, relevant com-

munication materials, and a payment tool to be embedded within the monthly notification email, causing an increase in costs to the Company. The proposed amendment has an effective date of July 1, 2019.

The full text of the tariff proposal 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.

(16-G-0059SP6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Revise the Voluntary Residential Time-of-Use Delivery Rates for Rate Years 2 and 3 Due to an Inadvertent Omission

I.D. No. PSC-13-19-00013-P

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

Proposed Action: The Public Service Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to modify the Company's voluntary residential time-of-use delivery rates.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To revise the voluntary residential time-of-use delivery rates for Rate Years 2 and 3 due to an inadvertent omission.

Purpose: To provide accurate pricing structures that deliver benefits to customers.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on March 5, 2019 by Niagara Mohawk Power Corporation, d/b/a National Grid (National Grid) to revise its voluntary residential time-of-use delivery rates for Rate Years 2 and 3 of National Grid's currently effective three-year rate plan.

The proposed changes address an inadvertent omission by National Grid from the Joint Proposal approved by the Commission in its Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans, issued on March 15, 2018.

The Joint Proposal included Service Classification No. 1, Special Provision L, Residential Optional Time of Use Delivery and Commodity Rate (SC1VTOU) rates for Rate Year 1. Due to an inadvertent omission, the Joint Proposal did not include SC1VTOU rates for Rate Year 2 and Rate Year 3. Therefore, National Grid proposes to revise the SC1VTOU delivery rates in Rate Years 2 and 3, which National Grid derived using the same revenue neutral methodology used to derive Rate Year 1 rates. National Grid states that failure to revise SC1VTOU rates during the remaining term of the rate plan would result in customers on the rate potentially experiencing large bill impacts following the end of the three-year rate plan.

The full text of the petition and the full record of the proceeding may be viewed 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. (17-E-0238SP7)

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

Eligibility for Annual Per-Plug Incentives for DCFC Stations

I.D. No. PSC-13-19-00014-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 Tesla Inc.'s petition for rehearing of the Commission's February 7, 2019 Order Establishing Framework for Direct Current Fast Charging (DCFC) Infrastructure Program.

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

Subject: Eligibility for annual per-plug incentives for DCFC stations.

Purpose: To increase electric vehicle infrastructure penetration to accomplish New York's Zero Emission Vehicle adoption mandate.

Substance of proposed rule: The Commission is considering a petition for rehearing of the Commission's February 7, 2019 Order Establishing Framework for Direct Current Fast Charging Infrastructure Program (DCFC Program Order) filed by Tesla, Inc. (Tesla) on February 28, 2019. Tesla alleges that the Commission's DCFC Program Order contains violations of fact and law, which improperly disqualify Tesla's charging technology from eligibility for the incentive.

Specifically, Tesla alleges that the Commission unreasonably adopted a discriminatory definition of "publicly accessible stations" without providing notice of intent to adopt an alternative definition to that which was set forth in the stakeholder Consensus Proposal, and without reasonable record support or rational basis in the record. Furthermore, Tesla argues that the definition results in a rate that is discriminatory. Tesla also alleges that the DCFC Program Order fails to meet the Commission's Reforming the Energy Vision principles, because it disqualifies a particular charging technology and is not technology neutral. Tesla additionally contends that the Commission's requirement that Tesla's proprietary technology be coupled with another technology type is an unreasonable burden. Additionally, Tesla states that the Commission erred by assuming that Tesla drivers will be able to avail themselves of non-Tesla plugs. According to Tesla, only two of their three vehicle types may utilize a non-Tesla plug type, and the Commission made an error of fact.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(18-E-0138SP2)

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

Use of Electric Metering Equipment

I.D. No. PSC-13-19-00015-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Cricket Valley Energy Center, LLC, to use the SU420/B83T voltage transformer manufactured by Trench GmbH Germany in electric metering applications.

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

Subject: Use of electric metering equipment.

Purpose: To ensure that consumer bills are based on accurate measurements of electric usage.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Cricket Valley Energy Center, LLC on February 22, 2019, seeking approval to use the SU420/B83T voltage transformers manufactured by Trench GmbH Germany in electric metering applications.

The Commission requires new types of electric meters, transformers, and auxiliary devices used to measure electric service furnished to customers to be tested and also approved by the Commission before they may be used for the purposes of customer billing.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov The Commission may adopt, modify or reject, 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.

(19-E-0124SP1)

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

Transfer of Street Lighting Facilities

I.D. No. PSC-13-19-00016-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid for authority to transfer its street lighting facilities located in the Village of Cazenovia to the Village of Cazenovia.

Statutory authority: Public Service Law, section 70(1)

Subject: Transfer of street lighting facilities.

Purpose: To determine whether to transfer street lighting facilities.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on February 19, 2019 by Niagara Mohawk Power Corporation, d/b/a National Grid (National Grid), requesting approval to transfer certain street lighting facilities located in the Village of Cazenovia, New York (Village) to the Village.

Based on plant records, National Grid states that the original book cost of the facilities is approximately \$263,544, and the net book value is \$167,003, as of December 31, 2018. National Grid proposes to transfer the street lighting facilities to the Village for approximately \$178,336. National Grid explains that the agreement between it and the Village provides that the Company will calculate the actual net book value of the assets to be transferred at the time of closing and will adjust (up or down) the estimated purchase price to arrive at the final purchase price.

The full text of the petition and the full record of the proceeding may be viewed 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.

(19-E-0119SP1)

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

Use of Electric Metering Equipment

I.D. No. PSC-13-19-00017-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Cricket Valley Energy Center, LLC to use the ANB-0.72 current transformer manufactured by Koncar Croatia in electric metering applications.

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

Subject: Use of electric metering equipment.

Purpose: To ensure that consumer bills are based on accurate measurements of electric usage.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Cricket Valley Energy Center, LLC on February 22, 2019, seeking approval to use the ANB-0.72 current transformer, manufactured by Koncar Croatia, in electric metering applications.

The Commission requires new types of electric meters, transformers, and auxiliary devices used to measure electric service furnished to customers to be tested and also approved by the Commission before they may be used for the purposes of customer billing.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may approve, modify or reject, 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.

(19-E-0125SP1)

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

Use of Electric Metering Equipment

I.D. No. PSC-13-19-00018-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Cricket Valley Energy Center, LLC to use the ELK CN14/300-560 current transformer, manufactured by ABB s.r.o. Czech Republic, in electric metering applications.

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

Subject: Use of electric metering equipment.

Purpose: To ensure that consumer bills are based on accurate measurements of electric usage.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Cricket Valley Energy Center, LLC, on February 22, 2019, seeking approval to use the ELK CN14/300-560 current transformer, manufactured by ABB s.r.o. Czech Republic, in electric metering applications.

The Commission requires new types of electric meters, transformers, and auxiliary devices used to measure electric service furnished to customers to be tested, and also approved by the Commission before they may be used for the purposes of customer billing.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may approve, modify or reject, 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.

(19-E-0126SP1)

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

Pole Attachment Rates

I.D. No. PSC-13-19-00019-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 proposal filed by Central Hudson Gas & Electric Corporation to modify its electric tariff schedule, P.S.C. No. 15, to update pole attachment rates applicable to Cable System Operators and Telecommunication Carriers.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Pole attachment rates.

Purpose: To provide just and reasonable pole attachment rates.

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) on March 1, 2019, to amend its electric tariff schedule, P.S.C. No. 15—Electricity.

Central Hudson proposes to update its pole attachment rates applicable to Cable System Operators and Telecommunication Carriers to \$22.27, per equivalent pole, based on 2018 data. The proposed amendment has an effective date of July 1, 2019.

The full text of the proposal 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.

(19-E-0134SP1)

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

Petition to Submeter Electricity

I.D. No. PSC-13-19-00020-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 petition of Liberty for Columbus LLC to submeter electricity at 671 Liberty Avenue, Brooklyn, New York.

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

Subject: Petition to submeter electricity.

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

Substance of proposed rule: The Commission is considering the petition filed by Liberty for Columbus LLC on March 1, 2019, to submeter electricity at 671 Liberty Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, Liberty for Columbus LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents 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 petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(19-E-0132SP1)

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

Modifications to the Gas Supply Charge and Balancing Service Programs

I.D. No. PSC-13-19-00021-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 proposal filed by Orange and Rockland Utilities, Inc. to modify its gas tariff schedule, P.S.C. No. 4, regarding the Gas Supply Charge and Balancing Service Program.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Modifications to the Gas Supply Charge and Balancing Service Programs.

Purpose: To ensure safe and reliable service for customers at just and reasonable rates.

Substance of proposed rule: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. (O&R or the Company) on March 4, 2019, to amend its gas tariff schedule, P.S.C. No. 4.

The Company proposes to recover certain costs associated with trucked and stored compressed natural gas (CNG) and liquefied natural gas (LNG). O&R proposes to recover these costs through the Gas Supply Charge (GSC) and Balancing Service Program. The Company proposes modifications to General Information Section No. 12.1 to: (1) clarify that fixed

costs associated with trucked and stored CNG and LNG are recoverable through the Fixed Gas Cost component of the GSC; (2) allow the recovery of development costs associated with trucked and stored CNG and LNG projects including abandoned projects through the Fixed Gas Cost component of the GSC; and (3) clarify that gas commodity costs associated with trucked and stored CNG and LNG are recoverable through the Variable Gas Cost component of the GSC. O&R also proposes modifications to General Information Section No. 12.2(I) to clarify that fixed costs associated with trucked and stored CNG and LNG are recoverable through the Balancing Charge component of the Monthly Gas Adjustment (MGA), and allow the recovery of development costs associated with trucked and stored CNG and LNG projects, including for abandoned projects, through the Balancing Charge component of the MGA. The proposed amendments have an effective date of July 1, 2019.

The full text of the proposal 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.

(19-G-0171SP1)

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

Transfer of Street Lighting Facilities

I.D. No. PSC-13-19-00022-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 New York State Electric & Gas Corporation for the transfer of its street lighting facilities located in the Town of Lancaster, NY to the Town of Lancaster, NY.

Statutory authority: Public Service Law, section 70(1)

Subject: Transfer of street lighting facilities.

Purpose: To consider whether the transfer of certain street lighting facilities is in the public interest.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by New York State Electric & Gas Corporation (NYSEG or the Company) on February 7, 2019, requesting approval to transfer ownership of its system of street lighting poles, luminaires, lamps, mast arms, electrical connections, and wiring for street lighting installed throughout the Town of Lancaster (Town) limits to the Town.

Based on plant records, NYSEG represents that the original book cost of the facilities is approximately \$988,174 and that the net book value, as of December 31, 2018, is \$258,131. The Company proposes to transfer the street lighting facilities to the Town for \$637,130. Upon the closing date of the sale, the Town will become solely responsible and liable for the operation, maintenance, and condition of the street lighting facilities.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

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

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

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

(19-E-0077SP1)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Outreach, Homeless Services Plans and Outcome Reporting

I.D. No. TDA-49-18-00009-A

Filing No. 177

Filing Date: 2019-03-08

Effective Date: 2019-03-27

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

Action taken: Addition of section 304.2 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(2)(b), (3)(d)-(e), 34(3)(c)-(f) and (6)

Subject: Outreach, Homeless Services Plans and Outcome Reporting.

Purpose: To promote effective planning and strategic use of resources by social service districts in combatting homelessness through their submission of homeless services plans and homeless services outcome reports, and to require social services districts to provide homeless services and engage in outreach to persons experiencing homeless, including the unsheltered homeless, in accordance with homeless service plans approved by the Office of Temporary and Disability Assistance.

Text or summary was published in the December 5, 2018 issue of the Register, I.D. No. TDA-49-18-00009-EP.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Temporary and Disability Assistance (OTDA) received public comments relative to the regulation. The comments sought clarification about the implementation of the regulation by social services districts (districts). OTDA recently addressed several of the inquiries posed in these comments through its January 15, 2019 issuance of Administrative Directive 19-ADM-03, Homeless Services Plan and Outcome Reporting (19-ADM-03).

Comment 1:

Several activities noted in the emergency rule appear duplicative of the work already done by Continuums of Care (CoCs).

Response 1:

OTDA intentionally considered the work performed by the CoC homeless services coordinating bodies and based its rulemaking in substantial part on relevant sections of the U.S. Department of Housing and Urban Development's (HUD's) CoC Program Interim Rule, published April 1, 2017 (see <https://www.hudexchange.info/resource/2033/heart-coc-program-interim-rule/>). OTDA encourages districts to work closely with the CoCs, which were established in order to access CoC funding available through the McKinney-Vento Homeless Assistance Act of 1987, 42 USC § 11301 et seq., as amended by the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009, Pub L 111-22. Coordination with the local CoC will support each district's ability to establish a homeless services plan and to track services and outcomes. Data regarding program-specific and district-wide outcomes can be tracked by making use of existing data collection methods such as the CoC's Home-

less Management Information System (HMIS). 19-ADM-03 addresses this issue in more detail, and OTDA will be issuing further administrative guidance to districts regarding HMIS data.

Comment 2:

CoCs are required to report on multiple data points to HUD. Can OTDA receive the information from the CoC?

Response 2:

OTDA anticipates that each district will be able to obtain relevant data from its CoC's HMIS. 19-ADM-03 addresses this issue in more detail, and OTDA will be issuing further administrative guidance to districts regarding HMIS data.

Comment 3:

What elements will OTDA require districts to track relative to those unsheltered individuals who refuse to be linked to appropriate services, assistance or housing? Some of these services are conducted by non-subcontract agencies, making it difficult for districts to obtain information.

Response 3:

Outreach undertaken to engage unsheltered individuals is tracked through outreach contacts documented in HMIS. Unsheltered individuals also are reflected in "point-in-time" counts conducted by CoCs. 19-ADM-03 addresses the issue of tracking of outreach efforts in more detail.

Comment 4:

With respect to § 304.2(b)(1), is the required point-in-time count conducted under the supervision of the CoC? Is this information already obtained by OTDA from the CoC?

Response 4:

OTDA anticipates that each district will be able to coordinate with and obtain necessary data from its CoC, including data relating to the CoC's point-in-time count. Each district will be responsible for confirming the accuracy of its point-in-time count data, especially as that data pertains to emergency hotel/motel placements.

Comment 5:

With respect to § 304.2(b)(1), how does a district collect an unduplicated number when multiple providers may be serving and reaching the same individual and/or certain providers not under contract with a district do not collect this information?

Response 5:

Duplicative information is removed from HMIS, and HMIS should contain information from providers not under contract with a district. The regulation requires that districts develop homeless services plans that take into account all homeless individuals and families within the district, and not just those served by district-contracted agencies.

Comment 6:

With respect to 18 NYCRR § 304.2(b)(3) and (b)(6), there are many potential barriers to collecting information on previously homeless individuals. Districts have limited authority and limited ability to collect data and outcome measurements from non-subcontract agencies who may be serving the targeted population.

Response 6:

OTDA anticipates that the districts will be able to coordinate with the CoCs and to obtain necessary data, including data relating to previously homeless individuals, from the CoCs. This information is available through the HMIS.

Comment 7:

With respect to 18 NYCRR §§ 304.2(b)(3) and (b)(6), does OTDA expect the districts to work directly with the formerly homeless once they leave a homeless shelter, outside of current compliance requirements for Temporary Assistance recipients? Are districts expected to provide the support services enumerated in §§ 304.2(b)(3) and (b)(6)? Several of these supports are beyond the districts' areas of expertise.

Response 7:

OTDA believes that districts will work with their respective CoCs to create service systems that ultimately reduce homelessness. The regulation does not require districts themselves to provide all necessary support services. Rather, OTDA anticipates that districts will work collaboratively with their CoCs and service providers to help ensure that needed services are available.

Comment 8:

With respect to 18 NYCRR §§ 304.2(b)(3) and (b)(6), the rule making identifies that there will be no additional costs. Providing the required services would be a potentially significant cost to the districts.

Response 8:

OTDA believes that, by more effectively coordinating the provision of homeless services and tracking outcome data, the districts will be able to provide homeless services in a more cost-effective manner, thereby helping to reduce the number of persons experiencing homelessness and, in turn, resulting in a cost reduction for the districts.

Comment 9:

With respect to 18 NYCRR § 304.2(d), what information will be required to appear in the prescribed homeless services outcome report form?

Response 9:

19-ADM-03 details the requirements for homeless services reports and includes a homeless services plan outcome report template.

Comment 10:

Any data reporting required must be limited to data already collected by the district. A district may participate in HMIS in a limited manner, and data provided by a district to its CoC is configured to comply with HUD requirements. Other data collected by a district is limited to information already required by OTDA and recorded in the Welfare Management System. Any additional data would fall outside the scope of the districts' required work and would require the utilization of new data collection systems at additional cost to the districts.

Response 10:

The data required to comply with the regulation is available through the CoC and HMIS, with the exception of the number of homeless individuals and families served by the district who are receiving temporary housing assistance (THA), which is information that only the district can provide. OTDA anticipates that the districts can coordinate with their CoC and obtain necessary data from their CoC. 19-ADM-03 addresses this issue in more detail.

Comment 11:

CoCs conduct ongoing assessments and engage in planning to address homelessness, and create complete and thorough strategic plans to address homelessness, which include identifying issues within the continuum of homeless services and housing.

Response 11:

OTDA agrees. It anticipates that the districts will collaborate and coordinate with their CoC in developing homeless services plans.

Comment 12:

What expectations does OTDA have of districts to conduct outreach? Does OTDA expect districts to conduct street outreach, a service which is not in the realm of DSS expertise? Does OTDA expect districts to provide print or other media advertisements, such as in bus shelters? Districts would need to subcontract with provider agencies or purchase these services at an additional cost. Will districts be fully reimbursed for such costs?

Response 12:

Both the regulation and 19-ADM-03 define "outreach" to mean "the engagement of persons experiencing homelessness in order to link them to services, assistance and housing," and clarify that "[i]t can include direct outreach to undomiciled persons through outreach workers or law enforcement officers as well as community-based outreach provided through agencies that serve persons who are homeless or at risk of becoming homeless, such as, but not limited to, food pantries, soup kitchens, and drop-in centers." Districts may contract with providers to engage in outreach. OTDA will reimburse districts for costs relating to certain outreach efforts undertaken during "Code Blue" periods, consistent with a plan submitted by the districts and approved by OTDA and the Division of Budget.

Comment 13:

What information must districts collect from providers, police and other agencies that are not district subcontractors, but essential partners that may conduct outreach on behalf of districts? Districts will have limited ability to collect data from non-subcontract organizations, but the services these non-subcontract organizations provide could be vital to identifying and sheltering homeless.

Response 13:

Both the regulation and 19-ADM-03 describe the information required to appear in homeless services plans and outcome reports.