

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; or C for first Continuation.)

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

Crime Victims Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Direct Reimbursement of Forensic Sexual Assault Examination

I.D. No. CVB-11-05-00004-P

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

Proposed action: Addition of section 525.12(h) to Title 9 NYCRR.

Statutory authority: Executive Law, sections 623(3) and 631(13)

Subject: Direct reimbursement of forensic sexual assault examination.

Purpose: To define the services covered by the forensic sexual assault examination fee and set forth procedures for obtaining the fee.

Text of proposed rule: A new section 525.12(h) is added as follows:

Section 525.12(h) Direct Reimbursement of Forensic Sexual Assault Examinations.

(1) Definitions:

(i) *Licensed provider shall mean any New York State accredited hospital or physician licensed to practice medicine in the State of New York, accredited sexual assault examiner program or a registered physician's assistant, nurse practitioner or registered nurse certified by a Sexual Assault Forensic Examiner (SAFE) program approved by the Department of Health pursuant to the provision of the Sexual Assault Reform Act, Chapter 1 of the Laws of 2000.*

(ii) *Sexual Assault shall mean any sexual offense defined in Article 130 of the New York State Penal Law.*

(iii) *Forensic Examination shall mean an examination conducted by a licensed provider as defined in Section 525(h)(1)(i) hereof for the purpose of collecting and preserving evidence to document a sexual assault, conducted in accordance with the New York State Department of Health's Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault or the Child and Adolescent Sexual Offense Protocol. Copies of these protocols may be obtained from the Department of Health at the following address:*

*The Bureau of Women's Health
NYS Department of Health
Room 1882, Tower Building
Empire State Plaza
Albany, New York 12237-0621
Phone: (518) 474-3664*

(iv) *Claim Form shall mean the New York State Crime Victims Board Medical Provider Forensic Rape Examination Claim Form included in the Sexual Offense Evidence Collection Kit or available online at <http://www.cvb.state.ny.us>.*

(v) *Child victim shall mean a person less than eighteen years of age as defined in New York State Executive Law Article 22, Section 621(11).*

(2) *Notwithstanding any contrary provisions, whenever a licensed provider administers a forensic examination to a survivor of a sexual assault in accordance with the established protocol as defined in section 525.12(h)(1)(iii) hereof, such provider shall render such services without charge and shall bill the Board directly, unless the sexual assault survivor assigns his or her private insurance benefits for the forensic examination, in which case the Board shall not be billed.*

(3) *At the time of the initial visit, the provider shall:*

(i) *request assignment of any private health insurance benefits on a form prescribed by the Board,*

(ii) *advise a sexual assault survivor orally and in writing that he or she may decline to provide private health insurance information if he or she believes it would substantially interfere with his or her personal privacy or safety,*

(iii) *advise a sexual assault survivor that providing such information may provide additional resources to pay for services to other sexual assault victims, and*

(iv) *require that if he or she declines to provide such health insurance information, he or she shall indicate such decision on the form prescribed by the Board.*

(4) *Eligibility criteria:*

(i) *To establish eligibility, a licensed provider shall submit a completed Claim Form as defined in section 525.12(h)(1)(iv), an itemized bill indicating, where applicable, the relevant current procedural terminology (CPT) codes associated with each service provided and, if a Sexual Offense Evidence Collection Kit is used, copies of the Patient Information form and Medical Record Sexual Assault form included in the Kit, to the Board at the address below.*

*New York State Crime Victims Board
845 Central Avenue – South 3
Albany, NY 12206*

(ii) *Upon receipt of a completed Claim form, and if applicable, the Patient Information form and Medical Record Sexual Assault form, and acceptance by the Crime Victims Board, payment will be authorized directly to the licensed provider.*

(5) *The provider shall be reimbursed at the rate of \$800.00 for forensic examiner services, hospital or healthcare facility services directly related to the forensic exam, and related laboratory tests and pharmaceuticals. The Board has determined that reimbursable expenses shall include at a minimum:*

(i) *Forensic examiner and hospital or healthcare facility services related to the exam, including integral forensic supplies.*

(ii) *Scope procedures including but not limited to anoscopy and colposcopy.*

(iii) *Laboratory testing directly related to the forensic examination, including drug screening, urinalysis, pregnancy screen, syphilis screening, Chlamydia culture, gonorrhea coverage culture, blood test for HIV screening, hepatitis B and C, and herpes culture,*

(iv) *Pharmaceuticals directly related to the forensic examination including STD, pregnancy, initial HIV prophylaxis up to a three day supply and Hepatitis Prophylaxis.*

(v) *Follow-up post exposure HIV prophylaxis shall not be reimbursable under this part.*

(6) *The victim shall not be responsible for the payment of the cost of the forensic examination. The licensed provider must accept the reimbursement rate as payment in full. The licensed provider shall not submit any remaining balance after reimbursement by the Board to the victim or commence civil actions against the victim to recover any balance due.*

(7) *The costs for multiple forensic examinations of the same victim will not be reimbursed. The cost of only one forensic sexual assault examination per victim per alleged sexual assault will be considered a reimbursable cost.*

(8) *In the event there are multiple fees from separate service providers for the forensic examination or services directly related to the forensic examination, the Board will reimburse the facility in which the forensic examination was conducted and whose licensed provider name and license number appears on the Claim Form, a maximum aggregate amount of \$800.00 to be allocated among the service providers. The facility in which the examination is conducted shall be responsible for allocating reimbursable expenses among separate service providers.*

(9) *Expenses must be related to a forensic examination performed within 96 hours following the incident. This reporting time may be waived for a child victim or if good cause has been shown.*

(10) *A claim for reimbursement of expenses associated with a forensic examination made pursuant to this section must be submitted within one year of the date of the examination to the Albany Office of the Crime Victims Board.*

Text of proposed rule and any required statements and analyses may be obtained from: David N. Green, Crime Victims Board, 845 Central Ave., Suite 3, Rm. 107, Albany, NY 12206, (518) 457-8060, e-mail: davegreen@cvb.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

Executive Law Section 623(3) grants the Board general authority to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22. Section 631(13) grants the Board specific authority to generate the necessary regulations and forms for the direct reimbursement procedure prescribed by that section.

2. Legislative Objective:

This measure provides Crime Victims Board funding directly to qualified healthcare providers for forensic examination services.

3. Needs and Benefits:

Sexual assault reform legislation of 2000 created the Sexual Assault Examiner program for sexual assault victims, however, it provided no funding to support these services unless a victim filed a claim with the Crime Victims Board. This measure would address the need for funding for qualified healthcare providers.

An initial payment for each exam of \$800, to be adjusted annually and uniformly across the state will help ensure quality forensic care at a reasonable rate on which the providers can rely.

Pursuant to Executive Law 631(13), the Board has consulted with the State Department of Health and in particular the Department of Health's Bureau of Woman's Health and Rape Crisis Program, and the Bureau of Primary & Acute Care Reimbursement, at every stage of development of the regulations.

The Board has had substantial contact with the New York State Coalition Against Sexual Assault (NYCASA), a nonprofit advocacy group

involved in the drafting and enactment of Executive Law 631(13) that gives rise to these proposed regulations.

In addition, the Board has consulted with the Greater New York Hospital Association (GNYHA), the Medical Society of the State of New York (MSSNY), the Healthcare Association of New York State (HANY), the New York State Child Advocacy Resource and Consultation Center (NYS-CARCC), the Oneida County Child Advocacy Center and Dr. Ann Botash, the Director of the Child Abuse Referral and Evaluation (CARE) program, and Director of the Child Abuse Medical Provider (CHAMP) program and author of the CHAMP educational program for healthcare professionals.

4. Costs:

It is anticipated that the reimbursement rate of \$800.00 will cover the costs incurred by any regulated party to comply with the proposed rule.

The funding for this program comes from the Criminal Justice Improvement Account (CJIA) established pursuant to the provisions of Section 99-bb of the State Finance Law. The fund will initially cover 100% of the costs of reimbursement of forensic examinations performed under the program. The Board will be reimbursed at the rate of 60% from funds provided under the Federal Victims of Crime Act at 42 U.S.C. 10601 *et seq.* (VOCA).

In 1998, there were 3,836 reported forcible rapes in New York (1998 DCJS Crime and Justice Annual Report) If all of these victims had forensic examinations performed, the total cost under this provisions would be \$3,068,800. Of this amount, 60% would be reimbursed to the Board with Federal VOCA funds. Any sexual assault reported after the expiration of 96 hours, the time period within which a forensic examination must be performed, would be excluded from this amount. If a forensic examination were performed on all victims who reported forcible rape, and those victims did not take advantage of their private health insurance, Medicaid or any other third party insurance, the projected state share would be approximately \$1,225,000.00. It should be noted that in 1999, the number of reported forcible rapes in New York declined by 12%. (1999 DCJS Crime and Justice Annual Report)

5. Local Government Mandate:

There are no local government mandates associated with the proposed rule.

6. Paperwork:

As required by Executive Law Section 631(13), the Board has created a form to facilitate reimbursement. To minimize the paperwork impact, the form and an instructional letter will be supplied with each Sexual Offense Evidence Collection Kit distributed by the Division of Criminal Justice Services to qualified health care providers and be made available, independent of the kit, on the Board's website at <http://www.cvb.state.ny.us>. Providers will be required to follow the instructions, fill out the claim form and file it with the Board in order to benefit from the reimbursement program.

7. Duplication:

There are no rules or legal requirements that duplicate, overlap or conflict with the proposed rule.

8. Alternatives:

The only alternative to the proposed rule is the absence of any proposed rule which would not comply with the statute.

9. Federal Standards:

There are no federal standards for direct reimbursement of sexual assault forensic examinations.

10. Compliance Schedule:

Regulated persons will be able achieve compliance immediately upon adoption of the rule. Executive Law 631(13) becomes effective on April 1, 2005. The Board shall begin making payments for reimbursement of forensic examinations conducted under the provisions rule on the effective date of the statute.

Regulatory Flexibility Analysis

1. Effect of the rule:

There are no effects on local governments. Small and individual medical practices that provide forensic examination services to sexual assault victims will be able to obtain reimbursement for services rendered without delay.

2. Compliance requirements:

Qualified individual healthcare providers and small medical practices will be required to fill out a form and file it with the Board in order to obtain the reimbursement fee. As required by Executive Law Section 631(13), the Board has created a form to facilitate reimbursement. To minimize the paperwork impact, the form and an instructional letter will be supplied with each Sexual Offense Evidence Collection Kit distributed by the Division of Criminal Justice Services to qualified health care providers

and be made available, independent of the kit, on the Board's website at <http://www.cvb.state.ny.us>.

3. Professional services:

In order to qualify for reimbursement, forensic examination services must be performed by a New York State accredited hospital or physician licensed to practice medicine in the State of New York, accredited sexual assault examiner program or a registered physician's assistant, nurse practitioner or registered nurse certified by a Sexual Assault Forensic Examiner (SAFE) program approved by the Department of Health pursuant to the provision of the Sexual Assault Reform Act of 2000 and conduct such examinations in accordance with the New York State Department of Health's Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault or the Child and Adolescent Sexual Offense Protocol.

4. Compliance costs:

It is anticipated that the reimbursement rate of \$800.00 will cover the costs incurred by any regulated party to comply with the proposed rule.

5. Economic and technological feasibility:

There are no issues of economic or technological feasibility. It is anticipated that the reimbursement rate of \$800.00 will cover the costs incurred by any regulated party to comply with the proposed rule.

The funding for this program comes from the Criminal Justice Improvement Account (CJIA) established pursuant to the provisions of Section 99-bb of the State Finance Law. The fund will initially cover 100% of the costs of reimbursement of forensic examinations performed under the program. The Board will be reimbursed at the rate of 60% from funds provided under the Federal Victims of Crime Act at 42 U.S.C. 10601 *et seq.* (VOCA).

In 1998, there were 3,836 reported forcible rapes in New York (1998 DCJS Crime and Justice Annual Report) If all of these victims had forensic examinations performed, the total cost under this provisions would be \$3,068,800. Of this amount, 60% would be reimbursed to the Board with Federal VOCA funds. Any sexual assault reported after the expiration of 96 hours, the time period within which a forensic examination must be performed, may be excluded from this amount. If a forensic examination were performed on all victims who reported forcible rape, and those victims did not take advantage of their private health insurance, Medicaid or any other third party insurance, the projected state share would be approximately \$1,225,000.00. It should be noted that in 1999, the number of reported forcible rapes in New York declined by 12%. (1999 DCJS Crime and Justice Annual Report)

6. Minimizing adverse impact:

No adverse economic impact on small businesses or local government is anticipated. However, the reimbursement rate, by statute, may be adjusted annually to keep pace with the cost providing forensic examination services.

As required by Executive Law Section 631(13), the Board has created a form to facilitate reimbursement. To minimize the paperwork impact, the form and an instructional letter will be supplied with each Sexual Offense Evidence Collection Kit distributed by the Division of Criminal Justice Services to qualified health care providers and be made available, independent of the kit, on the Board's website at <http://www.cvb.state.ny.us>.

7. Small business and local government participation:

Pursuant to Executive Law 631(13), the Board has consulted with the State Department of Health and in particular the Department of Health's Bureau of Woman's Health and Rape Crisis Program, and the Bureau of Primary & Acute Care Reimbursement, at every stage of development of the regulations. The Board has also had substantial contact with the New York State Coalition Against Sexual Assault (NYCASA), a nonprofit advocacy group involved in the drafting and enactment of Executive Law 631(13) that gives rise to these proposed regulations. In addition, the Board has consulted with the Greater New York Hospital Association (GNYHA), the Medical Society of the State of New York (MSSNY), the Healthcare Association of New York State (HANYS), the New York State Child Advocacy Resource and Consultation Center (NYSCARCC), the Oneida County Child Advocacy Center and Dr. Ann Botash, the Director of the Child Abuse Referral and Evaluation (CARE) program, and Director of the Child Abuse Medical Provider (CHAMP) program and author of the CHAMP educational program for healthcare professionals.

The Board will publish a notice of proposed rule making in the *State Register*.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rule applies Statewide. Qualified healthcare providers in all 62 Counties may benefit from the reimbursement fee provided for in the proposed rule.

2. Reporting, recordkeeping and other compliance requirements and professional services:

Qualified individual healthcare providers and small medical practices will be required to fill out a form and file it with the Board in order to obtain the reimbursement fee. There are no additional reporting or record-keeping requirements. In order to qualify for reimbursement, forensic examination services must be performed by a New York State accredited hospital or physician licensed to practice medicine in the State of New York, accredited sexual assault examiner program or a registered physician's assistant, nurse practitioner or registered nurse certified by a Sexual Assault Forensic Examiner (SAFE) program approved by the Department of Health pursuant to the provision of the Sexual Assault Reform Act of 2000 and conduct such examinations in accordance with the New York State Department of Health's Protocol for the Acute Care of the Adult Patient Reporting Sexual Assault or the Child and Adolescent Sexual Offense Protocol.

3. Costs:

It is anticipated that the reimbursement rate of \$800.00 will cover the costs incurred by any regulated party to comply with the proposed rule. The funding for this program comes from the Criminal Justice Improvement Account (CJIA) established pursuant to the provisions of Section 99-bb of the State Finance Law. The fund will initially cover 100% of the costs of reimbursement of forensic examinations performed under the program. The Board will be reimbursed at the rate of 60% from funds provided under the Federal Victims of Crime Act at 42 U.S.C. 10601 *et seq.* (VOCA).

In 1998, there were 3,836 reported forcible rapes in New York (1998 DCJS Crime and Justice Annual Report) If all of these victims had forensic examinations performed, the total cost under this provisions would be \$3,068,800. Of this amount, 60% would be reimbursed to the Board with Federal VOCA funds. Any sexual assault reported after the expiration of 96 hours, the time period within which a forensic examination must be performed, may be excluded from this amount. If a forensic examination were performed on all victims who reported forcible rape, and those victims did not take advantage of their private health insurance, Medicaid or any other third party insurance, the projected state share would be approximately \$1,225,000.00. It should be noted that in 1999, the number of reported forcible rapes in New York declined by 12%. (1999 DCJS Crime and Justice Annual Report)

4. Minimizing adverse impact:

No adverse impact on rural areas is anticipated. However, the reimbursement rate, by statute, may be adjusted annually to keep pace with the cost providing forensic examination services.

As required by Executive Law Section 631(13), the Board has created a form to facilitate reimbursement. To minimize the paperwork impact, the form and an instructional letter will be supplied with each Sexual Offense Evidence Collection Kit distributed by the Division of Criminal Justice Services to qualified health care providers and be made available, independent of the kit, on the Board's website at <http://www.cvb.state.ny.us>.

5. Rural area participation:

Pursuant to Executive Law 631(13), the Board has consulted with the State Department of Health and in particular the Department of Health's Bureau of Woman's Health and Rape Crisis Program, and the Bureau of Primary & Acute Care Reimbursement, at every stage of development of the regulations. These bureaus of Department of Health represent the healthcare interests of sexual assault victims, and healthcare professionals statewide.

The Board has also had substantial contact with the New York State Coalition Against Sexual Assault (NYSCASA), a nonprofit advocacy group involved in the drafting and enactment of Executive Law 631(13) that gives rise to these proposed regulations. NYSCASA is substantially involved in creating and maintaining rape crisis centers across New York State. In addition, the Board has consulted with the Greater New York Hospital Association (GNYHA), the Medical Society of the State of New York (MSSNY), the Healthcare Association of New York State (HANYS), the New York State Child Advocacy Resource and Consultation Center (NYSCARCC), the Oneida County Child Advocacy Center and Dr. Ann Botash, the Director of the Child Abuse Referral and Evaluation (CARE) program, and Director of the Child Abuse Medical Provider (CHAMP) program and author of the CHAMP educational program for healthcare professionals. These associations and professionals represent hospitals, physicians and healthcare professionals from every county in New York State including New York's rural areas.

In addition, the Board will publish a notice of proposed rule making in the *State Register*.

Job Impact Statement

1. Nature of impact:

The proposed rule provides for an additional funding source for qualified healthcare providers already in existence. To the extent that these additional funds encourage healthcare providers to become qualified forensic sexual assault examiners, we anticipate the impact to be negligible.

2. Categories and numbers affected:

Categories of persons affected by the proposed rule include physicians licensed to practice medicine in the State of New York, registered physician's assistants, nurse practitioners or registered nurses certified by a Sexual Assault Forensic Examiner (SAFE) program approved by the Department of Health pursuant to the provision of the Sexual Assault Reform Act of 2000.

3. Regions of adverse impact:

There are no regions of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

No adverse impact on existing jobs is anticipated. To the extent that additional funds made available by the proposed rule encourage healthcare providers to become qualified forensic sexual assault examiners, we anticipate the development of new employment opportunities to be negligible.

As required by Executive Law Section 631(13), the Board has created a form to facilitate reimbursement. To minimize the paperwork impact, the form and an instructional letter will be supplied with each Sexual Offense Evidence Collection Kit distributed by the Division of Criminal Justice Services to qualified health care providers and be made available, independent of the kit, on the Board's website at <http://www.cvb.state.ny.us>.

line to cover the source's emissions during the control period. Each allowance constitutes a limited authorization to emit one ton of the relevant pollutant. The Department will allocate allowances to each source in accordance with methodologies that rely, in part, on the past operational history of the source. The sum of all allowances allocated by the Department for each control period forms the statewide emissions budget for the affected sources collectively. Allowances are transferable and may be banked for compliance in the future.

Changes to rule: Nonsubstantive changes were made to the express terms for Parts 237 and 238: Parts 237 and 238 changes were made to the heading for section 237-8.2 and Subpart 238-2 to make them consistent with the text in the regulations. Typographical errors were corrected in subparagraph 237-1.6(a)(1)(i), paragraph 237-4.1(c)(4), subparagraph 237-5.3(e)(2)(i), section 238-3.2 and subdivision 238-5.2(a). Unnecessary text was stricken from subdivisions 237-5.3(a), 238-5.3(a) and 238-5.3(b). Typographical errors along with clarifying revisions were made to paragraphs 237-5.3(d)(7) and 238-5.3(e)(8). Clarifying revisions were made to subdivision 237-5.2(b) and subdivision 238-5.2(b).

Expiration date: October 15, 2005.

Text of proposed rule and changes, if any, may be obtained from: Michael P. Sheehan, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, e-mail: mp-sheeha@gw.dec.state.ny.us

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

Department of Environmental Conservation

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Acid Deposition Reduction Budget Trading Programs for NO_x and SO₂

I.D. No. ENV-35-04-00024-C

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

The notice of proposed rule making, I.D. No. ENV-35-04-00024-P was published in the *State Register* on September 1, 2004.

Subject: New York State acid deposition reduction budget trading programs for NO_x and SO₂.

Purpose: To reduce emissions of NO_x and SO₂ from fossil fuel-fired electric generating sources statewide and protect the sensitive ecosystems in the Northeast from the damaging effects of acid deposition.

Substance of rule: The Department is establishing the Acid Deposition Reduction Program (ADRP) by promulgating 6 NYCRR Part 237, Acid Deposition Reduction NO_x Budget Trading Program, and 6 NYCRR Part 238, Acid Deposition Reduction SO₂ Budget Trading Program, and revising 6 NYCRR Part 200, General Provisions.

Under the ADRP, fossil fuel-fired electric generators in New York will be required to reduce emissions of acid deposition precursors, nitrogen oxides (NO_x) and sulfur dioxide (SO₂), in order to protect sensitive areas in the State from the devastation of acid deposition. Affected sources collectively must reduce SO₂ emissions to 50 percent below the levels allowed by Phase 2 of the federal acid rain program. The SO₂ reductions will be implemented in two phases which start on January 1, 2005 and January 1, 2008. Beginning on October 1, 2004, affected sources collectively must reduce NO_x emissions during the non-ozone season (October - April) to a level that corresponds with the NO_x reductions that will be achieved starting on May 1, 2003, through the implementation of 6 NYCRR Part 204, NO_x Budget Trading Program, for the ozone season (May - September).

The NO_x and SO₂ reductions will be implemented through the mechanism of emissions tracking and allowance trading programs. Under these programs, each source must have enough allowances by an annual dead-

Department of Health

EMERGENCY RULE MAKING

Self-Attestation of Resources for Medicaid Applicants and Recipients

I.D. No. HLT-11-05-00003-E

Filing No. 180

Filing date: Feb. 25, 2005

Effective date: Feb. 25, 2005

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

Action taken: Amendment of section 360-2.3(c)(3) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 366-a(2)

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

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity to adopt as an emergency rule:

Chapter 1 of the Laws of 2002 provides that Medicaid applicants and recipients seeking coverage of long-term care services, other than short-term rehabilitation, must provide adequate documentation to verify the amount of their accumulated resources. Persons who are not seeking coverage of long-term care services, or who are seeking coverage of short-term rehabilitation services, as defined by the Commissioner of Health, are allowed to attest to the amount of their resources.

The proposed regulation would provide the definition of the term "short-term rehabilitation" required by L. 2002, ch. 1 and necessary to implement the provisions of such chapter. The sooner the provisions of the statute can be implemented, the sooner the statutory goal of simplifying Medicaid enrollment and recertification will be achieved, with a consequent benefit to public health in terms of easier access to necessary health care. Therefore, complying with the normal rule making requirements would be contrary to the public interest, and the immediate adoption of the rule is necessary.

Subject: Resources for Medicaid applicants and recipients.

Purpose: To allow an applicant or recipient to attest to the amount of his or her resources unless the applicant or recipient is seeking Medicaid payment for long term care services.

Text of emergency rule: Paragraph (3) of subdivision (c) of Section 360-2.3 is amended to read as follows:

(3) Verification of resources. (i) *The applicant may attest to the amount of his or her resources, unless the applicant is seeking coverage for long-term care services. For purposes of this paragraph, long-term care services shall include those services defined in subparagraph (ii) of this paragraph, with the exception of short-term rehabilitation as defined in subparagraph (iii) of this paragraph.* The applicant must provide documentation of all available or potentially available resources when applying for long-term care services. The social services district must record the documentation provided and determine the availability of such resources.

(ii) *Long-term care services shall include, but not be limited to care, treatment, maintenance, and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided in an intermediate care facility certified under article sixteen of the mental hygiene law; provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of mental hygiene law; provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; provided by a home care services agency, certified home health agency or long-term home health care program as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the department of health; provided by a personal care provider licensed or regulated by any other state or local agency; provided in a hospital that is equivalent to the level of care provided in a nursing facility; and provided by an assisted living program in accordance with regulations of the department of health. Long-term care services also shall include: private duty nursing; limited licensed home care services; hospice services including services provided by the hospice residence program in accordance with the regulations of the department of health; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.*

(iii) *Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.*

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 May 25, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 206(1)(f) of the Public Health Law requires the Department of Health (Department) to enforce the provisions of the Medical Assistance Program, pursuant to titles eleven, eleven-A, and eleven-B of the Social Services Law (SSL). Section 363-a(2) of the SSL requires the Department to establish such regulations as may be necessary to implement the program of medical assistance for needy persons (Medicaid). Section 366-a(2)(a) of the SSL provides that a Medicaid applicant must provide information and documentation necessary for the determination of initial and ongoing eligibility. A new section 366-a(2)(b) of the SSL, as enacted by the Health Care Reform Act of 2002, provides that an applicant may attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term care services. An exception is made for short-term rehabilitation. For purposes of this provision, section 366-a(2)(b) of the SSL references the long-term care services described in paragraph (b) of section 367-f(1) of the SSL and authorizes the Commissioner of the Department to define the term "short-term rehabilitation".

Legislative Objectives:

Section 363-a of the SSL designates the Department as the single State agency responsible for implementing the Medicaid program in this State, and requires the Department to promulgate any necessary regulations which are consistent with federal and State law. The proposed regulatory amendment is necessary to define long-term care services and short-term rehabilitation for purposes of attestation of resources.

Needs and Benefits:

The purpose of the proposed regulatory amendment is to revise section 360-2.3(c)(3) of the Medicaid regulations concerning verification of resources. Currently, in determining whether an applicant is financially eligible for Medicaid, the applicant must provide documentation of all available or potentially available resources. A new subdivision (2) of section 366-a of the SSL, as enacted by the Health Care Reform Act of 2002, allows an applicant to attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term services. The section also allows an applicant to attest to the amount of his or her resources if Medicaid coverage is needed for short-term rehabilitation. The proposed regulatory amendment to section 360-2.3(c)(3) allows certain applicants to attest to the amount of their resources and to define the long-term care services for which resource documentation will still be required. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

As required by section 366-a(2)(b) of the SSL, the proposed regulatory amendment includes in the definition of long-term care services, those services described in section 367-f(1)(b) of the SSL. These services include care, treatment, maintenance and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided by a home care services agency, certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the Department of Health; or provided by a personal care provider licensed or regulated by any other state or local agency. In addition, the proposed regulatory amendment designates as long-term care services, for purposes of resource attestation, the following: a level of care provided in a hospital which is equivalent to the level of care provided in a nursing facility ("alternate level of care"); services provided in an intermediate care facility certified under article sixteen of the mental hygiene law; services provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of the mental hygiene law; services provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; services provided by an assisted living program; private duty nursing; limited licensed home care services; hospice care including the hospice residence program; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.

Section 366-a(2)(b) of the SSL allows attestation of resources by applicants seeking Medicaid coverage of short-term rehabilitation as defined by the Commissioner of the Department. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

Costs:

There should be no additional costs associated with this regulatory amendment. An analysis of several eligibility simplification proposals was performed in 2001 and it was concluded that while a fiscal impact could occur if applicants provided inaccurate information about their resources, this was unlikely. Since neither the Child Health Plus (CHP) nor the Family Health Plus (FHP) program have resource tests, it was determined that those Medicaid applicants who had excess resources would most likely still be eligible for either CHP or FHP. Therefore, this proposal has been considered to be cost neutral.

Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates. The amendment would remove the requirement that a Medicaid applicant submit proof of his or her resources for purposes of determining Medicaid eligibility, if the applicant is not seeking Medicaid coverage of long-term care services. The change simplifies the documentation requirements for local departments of social services administering the Medicaid program at the county level.

Paperwork:

No reporting requirements, forms, or other paperwork are necessitated by this proposed regulatory amendment. Currently, in determining Medicaid eligibility for long-term care services, social services districts must review resource documentation.

Duplication:

The proposed regulatory amendment does not duplicate any existing State or federal requirements.

Alternatives:

Section 366-a(2)(b) of the SSL requires that the services specifically listed in Section 367-f(1)(b) of the SSL be included in the definition of long-term care services. No alternatives were considered to the inclusion of these services in the definition.

In addition, in accordance with the authority granted in Section 367-f(1)(b) of the SSL, the proposed regulatory amendment designates a number of services as long-term care services for purposes of resource attestation: hospice care; private duty nursing; alternate level of care in a hospital; assisted living program; intermediate care facility; residential treatment facility; developmental center; the Care at Home Waiver program; the Traumatic Brain Injury Waiver program; the Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program; limited licensed home care services; personal emergency response services; and the consumer directed personal assistance program. Alternatives were considered with respect to the inclusion or exclusion of particular services in this list. However, given the nature, duration, and cost of these services, as well as the fact that many of these services are delivered by the same providers who furnish the long-term care services specifically listed in SSL Section 367-f(1)(b), the Department determined that the best alternative was to require documentation of resources by applicants seeking coverage of these services.

For purposes of defining short-term rehabilitation, the Department formed a work group with representatives from local social services districts and solicited feedback from the local social services districts' provider community. It was reported that there is no durational difference between inpatient and community-based short-term rehabilitation. Therefore, the workgroup recommended that short-term rehabilitation not be defined solely by type of service. The workgroup recommended defining short-term rehabilitation as receipt of one annual episode of services lasting less than 30 days, because 30 days was the median length of stay for rehabilitation purposes according to information gathered from providers, and because this would eliminate cases that are subject to spousal impoverishment budgeting, which is not viewed as short-term care.

The workgroup recommended that alternate level of care in a hospital not be included in the definition, because the average alternate level of care stay extends beyond 30 days and because none of the providers viewed this as a short-term rehabilitation situation. Similarly, investigation by Department staff indicated that personal care services are provided to individuals who are chronically ill and require care on a long-term basis. Consequently, these services were not included in the definition of short-term rehabilitation.

Federal Standards:

The proposed regulatory amendment complies with federal statute.

Compliance Schedule:

Social services districts will be advised of the change when the amendment becomes effective.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required. The proposed amendment would not impose any adverse impact on businesses, either large or small, nor will the proposal impose any new reporting, recordkeeping or other compliance requirements on a business.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this proposed action is not required. As mentioned in the regulatory impact statement, the proposed amendment would allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining Medicaid eligibility. This provision would not affect rural areas any more than non-rural areas. The proposed amendment does not impose any new reporting, recordkeeping or any other new compliance requirements on rural or non-rural areas.

Job Impact Statement

A Job Impact Statement is not required. The proposal will not have an adverse impact on jobs and employment opportunities. The proposed rule is required to allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining eligibility for Medicaid.

Insurance Department

EMERGENCY RULE MAKING

Rules for Key Person Corporate-Owned Life Insurance

I.D. No. INS-11-05-00002-E

Filing No. 179

Filing date: Feb. 25, 2005

Effective date: Feb. 25, 2005

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

Action taken: Addition of Part 48 (Regulation 180) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 3205

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

Specific reasons underlying the finding of necessity: Corporate-owned life insurance covering rank-and-file employees, also called "janitor insurance" or "dead peasant insurance," has been the focus of numerous negative press articles and public commentaries over the last several years. In many cases, the covered employees were not notified and did not consent to such insurance. In addition, the Internal Revenue Service has pursued litigation against some companies using corporate-owned life insurance as a means of evading taxes.

Most recently in response to criticism concerning COLI, the United States Senate has drafted legislation that provides for the taxation of death proceeds of corporate-owned life insurance under certain circumstances. The Senate's proposal addresses the abuses of "janitor insurance" and recognizes the legitimate business need for COLI to serve as a funding vehicle for employee benefit plans. As a result, the Senate's legislative proposal provides that death benefits under corporate-owned life insurance policies will not be taxable if the employee is a key employee as defined in the proposed legislation.

The potential for abuse in the corporate-owned life insurance market has long been a concern of the New York Legislature. Chapter 491 of the Laws of 1996 added a new subsection (d) to Section 3205 to provide notice, consent and termination rights to employees, including rank-and-file employees, whose lives were insured under corporate-owned life insurance programs designed to fund employee benefit plans. Such notice, consent and termination rights were designed to reduce the potential for abuse in the COLI market.

Since the notice, consent and termination rights only apply in the case of Section 3205(d) COLI and not key person COLI under Section 3205(a)(1)(B), it is imperative that insurers only insure key employees under Section 3205(a)(1)(B). This will also ensure that rank and file employees and other non-key employees receive the notice, consent and termination rights prescribed by Section 3205(d) and to curb some of the reported abuses associated with COLI on rank-and-file employees. This will serve to ensure that employees insured pursuant to the insurable interest provisions of Section 3205(a)(1)(B) are key employees.

The establishment of a key employee standard based on the proposed federal legislation will aid in curbing abuse in the corporate-owned life insurance market. Therefore, for the reasons stated above, this rule must be promulgated on an emergency basis for the preservation of the general welfare.

Subject: Rules for key person corporate-owned life insurance.

Purpose: To provide guidance to insurers in defining the term key person.

Text of emergency rule: A new Part 48 of Title 11 NYCRR (Regulation No. 180) is adopted to read as follows:

§ 48.0 Preamble and Purpose.

(a) Section 3205(b)(2) of the Insurance Law provides in part that "No person shall procure or cause to be procured, directly or by assignment or otherwise any contract of insurance upon the person of another unless the benefits under such contract are payable . . . to a person having, at the time when such contract is made, an insurable interest in the person insured."

(b) Section 3205(a)(1)(B) of the Insurance Law defines the term "insurable interest", for the purposes of life and accident and health insurance, to include ". . . a lawful and substantial economic interest in the continued life, health or bodily safety of the person insured, as distin-

guished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured.”

(c) Under Section 3205(a)(1)(B), an employer has an insurable interest in the lives of certain employees and other persons, commonly referred to as “key employees” or “key persons”, whose services and qualifications are of such nature that their death or disability would cause the employer to incur a substantial pecuniary loss.

(d) The purpose of this Part is to establish standards for life insurers and fraternal benefit societies issuing key person company-owned life insurance to ensure that the employees or other persons on whose lives coverage is being written pursuant to Section 3205(a)(1)(B) of the Insurance Law are actually key persons.

§ 48.1 Underwriting Guidelines.

An insurer using key person company-owned life insurance shall establish and apply appropriate underwriting guidelines to ensure that the employees or other persons on whose lives policies are written pursuant to Section 3205(a)(1)(B) are actually key persons.

§ 48.2 Standards.

For purposes of this Part and for establishing whether there exists an insurable interest under Section 3205(a)(1)(B) at the time the policy is issued, the term key person shall include the following persons:

(a) An employee who is one of the five highest paid officers of the employer;

(b) An employee who is a five-percent owner of the employer. A “five-percent owner” shall mean:

(1) If the employer is a corporation, any person who owns or controls more than five percent of the outstanding stock of the corporation or stock possessing more than five percent of the total combined voting power of all stock of the corporation; or

(2) If the employer is not a corporation, any person who owns more than five percent of the capital or profits interest in the employer;

(c) An employee who had compensation from the employer in excess of \$90,000 in the preceding year;

(d) An employee who is among the highest paid 35 percent of all employees; or

(e) An employee or other person who makes a significant economic contribution to the company, including but not limited to, an employee who is responsible for management decisions, has a significant impact on sales or a special rapport with customers and creditors, possesses special skills, or would be difficult to replace. Criteria for the employer’s determination shall be included in the insurer’s underwriting guidelines.

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 May 25, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The superintendent’s authority for the adoption of Regulation 180 (11 NYCRR 48) is derived from Sections 201, 301, and 3205 of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him (under the provisions of the Insurance Law) to prescribe forms or otherwise to make regulations. Section 3205 of the Insurance Law defines the term “insurable interest” and sets forth insurable interest requirements for any policy of life insurance and accident and health insurance.

2. Legislative objectives:

The insurable interest requirements contained in Section 3205 reflect the state’s public policy against contracts wagering on human life. Section 3205(b)(1)(2) prohibits the issuance of any policy upon the life of another person unless the beneficiary is the insured, personal representative of the insured, or a person having an insurable interest in the insured at the time the policy is issued.

Section 3205(a)(1)(B), applicable when policies are purchased by persons not closely related to the insured by blood or by law, defines “insurable interest” to include a lawful and substantial economic interest in the continued, life, health or bodily safety of the person insured, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured. Employers and insurers have historically relied upon Section 3205(a)(1)(B) to satisfy the

insurable interest requirement for the purchase of insurance on the lives of “key persons” or “key employees.”

In 1996, the Legislature added new subsections (d) and (e) to Section 3205 of the Insurance Law (L. 1996 c. 491) to specifically grant employers an insurable interest in any employee or retiree who is eligible to participate in an employee benefit plan. The Legislature enacted Section 3205(d) in order to assist employers with the financing of employee benefit plans through the use of corporate-owned life insurance (“COLI”) purchased on the lives of employees.

The purpose of the proposed regulation is to establish standards for life insurers issuing key employee COLI, pursuant to Section 3205(a) rather than Section 3205(d) COLI, to ensure that the employees on whose lives coverage is being written pursuant to Section 3205(a)(1)(B) of the Insurance Law are actually key employees.

3. Needs and benefits:

As noted in the Federal Standard section below, the definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft bill pending in the United States Senate which provides for the taxation of death proceeds of COLI under certain circumstances. The Senate’s proposal is intended to eliminate well-publicized abuses of COLI. The proposal also recognizes the legitimate business need for employers to use corporate owned policies as a funding vehicle for employee benefits, and specifically provides that COLI death benefits would not be taxable if the covered employee meets the definition of a key employee.

The potential for abuse in the COLI market has historically been a concern of the New York legislature as evidenced by the enactment of notice, consent and termination rights in Section 3205(d) and (e) of the Insurance Law in 1996, establishing an insurable interest for the purchase of life insurance used to fund employee benefit plans. Since the employee notice, consent and termination rights are not required when company-owned life insurance is purchased under Section 3205(a)(1)(B), it is imperative that insurers be provided with standards for key employees to ensure that such employees are key employees and to avoid the potential for any further abuses in the market. The establishment of a key employee standard would provide such guidance.

In addition, a key employee standard would enhance the Department’s market conduct exams by providing field examiners with a reference point. Field examiners currently lack statutory or regulatory standards for determining the proper application of Section 3205(a) and, specifically, whether COLI insurance issued pursuant to Section 3205(a) is on key employees.

The key employee standard is particularly important in the bank-owned life insurance market, in which employees do not receive Section 3205(d) protections. Currently, banks do not purchase coverage under Section 3205(d) because the employee’s ability to terminate coverage makes the policy an unreliable mechanism for funding plan liabilities and results in adverse tax consequences to the bank. When bank-owned life insurance is issued as key employee coverage under Section 3205(a)(1)(B), the key employee standard created by this proposed regulation will help ensure that the covered employees will in fact be key employees.

4. Costs:

Life insurers licensed in New York that sell key employee COLI are required to establish and apply appropriate underwriting guidelines to ensure that the employees on whose lives policies are written under Section 3205(a)(1)(B) are key employees. It is expected that most insurers in the key employee COLI market already have established key person underwriting guidelines and therefore will not incur any costs with the promulgation of the proposed regulation. Any insurers in the key employee COLI market that lack established key person underwriting guidelines would incur costs associated with the development of such guidelines. Insurers that do not participate in the key person COLI market should incur no costs in connection with the proposed regulation.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

5. Local government mandates:

The proposed regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The proposed regulation imposes no new reporting requirements.

7. Duplication:

The proposed regulation does not duplicate any existing law or regulation.

8. Alternatives:

The Department considered but rejected the prospect of issuing a Circular Letter to establish the standard for key person. The Department was concerned that the Circular Letter proposal would not have the same force and effect of a regulation, and would therefore be an inadequate mechanism to apply and enforce the insurable interest requirements of Section 3205.

9. Federal standards:

The definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft COLI bill pending in the United States Senate which provides for the taxation of death proceeds of COLI under certain circumstances. The Senate bill, which was approved by the Senate Finance Committee in February, 2004, provides that a key employee may be either a "highly compensated employee" under Section 414(q) of the Internal Revenue Code or a "highly compensated individual" under Section 105(h)(5) of the Internal Revenue Code (except that "35 percent" shall be substituted for "25 percent" in subparagraph (C) thereof). The purpose of the definition of key employee in the Senate bill is to create an exemption from tax for death proceeds paid to employers in connection with COLI, and does not relate to state insurable interest laws. There is no federal standard that defines key employee in the context of insurable interest for life insurance.

10. Compliance schedule:

The proposed regulation establishes a standard for all key employee life insurance policies issued before and after the effective date of the Regulation.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurance companies licensed to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Insurers covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

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

The regulation provides guidance to insurers in defining the term key person.

3. Costs:

Life insurers that sell key person COLI to fund broad-based employee benefit plans are required to establish and apply appropriate underwriting guidelines to ensure that the employees on whose lives policies are written under Section 3205(a)(1)(B) are key employees. It is expected that most insurers in the key person COLI market already have established key person underwriting guidelines and therefore will not incur any costs with the promulgation of the Regulation. Any insurers in the key person COLI market that lack established key person underwriting guidelines will incur costs associated with the development of such guidelines. Insurers that do not participate in the key person COLI market should incur no costs in connection with the Regulation.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

5. Rural area participation:

The regulation was drafted after consultation with the Life Insurance Council of New York, a trade organization representing life insurers in New York.

Job Impact Statement

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation provides guidance to insurers in defining the term key person for the purpose of compliance with the requirements of section 3205(a)(1)(B) of the Insurance Law.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Tariff for Electric Services

I.D. No. LPA-11-05-00005-P

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

Proposed action: The Long Island Power Authority is considering a proposal to adopt revisions to its tariff for electric services for remote meter reading charges.

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

Subject: Tariff for electric services.

Purpose: To adopt certain revisions to the tariff for electric service for remote meter reading charges.

Public hearing(s) will be held at: 10:00 a.m., May 3, 2005 at Huntington Town Hall, 100 Main St., Huntington, NY; and 2:00 p.m., May 3, 2005 at Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to amend its Tariff for Electric Service to charge customers for the installation and operation of remote meter reading equipment capable of providing usage and demand billing determinants without gaining access to the customer premises. The Authority may adopt, reject or modify, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Richard M. Kessel, Chairman, Long Island Power Authority, 333 Earle Ovington Blvd., Uniondale, NY 11553, (516) 222-7700

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

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

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

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

Department of Motor Vehicles

NOTICE OF ADOPTION

Chemung County Motor Vehicle Use Tax

I.D. No. MTV-52-04-00002-A

Filing No. 203

Filing date: March 1, 2005

Effective date: March 16, 2005

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

Action taken: Amendment of Part 29 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Chemung County motor vehicle use tax.

Purpose: To increase the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-52-04-00002-P, Issue of December 29, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Charges Applicable to the Sale of Certain Power and Energy

I.D. No. PAS-45-04-00007-A

Filing date: March 1, 2005

Effective date: March 1, 2005

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

Action taken: Adopt tariff amendments providing for the recovery of costs incurred by the authority in connection with the sale of electric power to certain direct firm power service business customers.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Text or summary was published in the notice of proposed rule making, I.D. No. PAS-45-04-00007-P, Issue of November 10, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: Angela.Graves@nypa.gov

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.

Public Service Commission

NOTICE OF ADOPTION

Minor Rate Increase by Ilion Board of Light Commissioners

I.D. No. PSC-46-04-00011-A

Filing date: Feb. 24, 2005

Effective date: Feb. 24, 2005

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

Action taken: The commission, on Feb. 9, 2005, adopted an order in Case 04-E-1336 approving amendments to Ilion Board of Light Commissioner's (IBLC) tariff schedule, P.S.C. No. 2—Electricity and directing IBLC to file further revisions.

Statutory authority: Public Service Law, section 66(12)

Subject: Minor rate filing by Ilion Board of Light Commissioners.

Purpose: To allow IBLC to increase annual electric revenues and convert its tariff schedule into electronic format.

Substance of final rule: The Commission authorized Ilion Board of Light Commissioners to increase annual electric revenues by \$127,089 or 4.4% provided IBLC file further revisions to its Service Classification No. 1 – Residential Applicability Clause and approved the conversion of IBLC's tariff schedule into electronic format, subject to the terms and conditions set forth in the Order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (04-E-1336SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Citizens Communications of New York and Nextel Partners of Upstate New York, Inc.

I.D. No. PSC-11-05-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Citizens Communications of New York and Nextel Partners of Upstate New York, Inc. to revise the interconnection agreement effective on Jan. 18, 2002.

Statutory authority: Public Service Law, section 94(2)

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Citizens Communications of New York and Nextel Partners of Upstate New York, Inc. in January 2002. The companies subsequently have jointly filed amendments to clarify the provisions regarding usage sensitive changes. The Commission is considering these changes.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(01-C-1752SA2)

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

Interconnection Agreement between Frontier Telephone of Rochester, Inc. and Gafachi Telecom-NY, Inc.

I.D. No. PSC-11-05-00008-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 whether to approve or reject, in whole or in part, a proposal filed by Frontier Telephone of Rochester, Inc. and Gafachi Telecom-NY, Inc. for approval of an interconnection agreement executed on Feb. 16, 2005.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Frontier Telephone of Rochester, Inc. and Gafachi Telecom-NY, Inc. have reached a negotiated agreement whereby Frontier Telephone of Rochester, Inc. and Gafachi Telecom-NY, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until May 16, 2005, or as extended.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(05-C-0200SA1)

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

Net Metering by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-05-00009-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 whether to approve or reject, in whole or in part, a proposal filed by consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 9.

Statutory authority: Public Service Law, section 66(12)

Subject: Net metering.

Purpose: To implement additional metering options for the net metering of time-of-use PV residential customers and time-of-use farm waste customers.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. (Con Edison or the company) proposes additional metering options for the net metering of Time-of-Use PV residential customers and Time-of-Use farm waste customers pursuant to Ordering Clause No. 4 of the Commission's Order Adopting Net Metering Tariff Provisions and

Requiring Additional Filings, issued and effective December 15, 2004 in Case Nos. 04-E-0917 and 04-E-0546. The company also proposes tariff language changes to simplify customers' metering options.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-E-0917SA2)

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

Net Metering by New York State Electric & Gas Corporation

I.D. No. PSC-11-05-00010-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 whether to approve or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 120.

Statutory authority: Public Service Law, section 66(12)

Subject: Net metering.

Purpose: To implement additional metering options for the net metering of time-of-use PV residential customers and time-of-use farm waste customers.

Substance of proposed rule: New York State Electric & Gas Corporation (NYSEG or the company) proposes additional metering options for the net metering of Time-of-Use PV residential customers and Time-of-Use farm waste customers pursuant to Ordering Clause No. 4 of the Commission's Order Adopting Net Metering Tariff Provisions and requiring Additional Filings, issued and effective December 15, 2004 in Case Nos. 04-E-0917 and 04-E-0546. The company also proposes revisions to its Service Classification No. 12 to permit a customer that has chosen the single meter option to agree to allow NYSEG to separately meter, at NYSEG's expense, excess electricity generated by the customer's generator.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-E-0917SA3)

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

Net Metering by Niagara Mohawk Power Corporation

I.D. No. PSC-11-05-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges,

rules and regulations contained in its schedule for electric service—P.S.C. No. 207.

Statutory authority: Public Service Law, section 66(12)

Subject: Net metering.

Purpose: To implement additional metering options.

Substance of proposed rule: Niagara Mohawk Power Corporation proposes additional metering options for the net metering of Time-of-Use PV residential customers and Time-of-Use farm waste customers pursuant to Ordering Clause No. 4 of the Commissioner’s Order Adopting Net Metering Tariff Provisions and Requiring Additional Filings, issued and effective December 15, 2004 in Case Nos. 04-E-0917 and 04-E-0546.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-E-0917SA4)

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

Net Metering by Orange and Rockland Utilities, Inc.

I.D. No. PSC-11-05-00012

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 whether to approve or reject, in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 2.

Statutory authority: Public Service Law, section 66(12)

Subject: Net metering.

Purpose: To implement additional metering options.

Substance of proposed rule: Orange and Rockland Utilities, Inc. proposes additional metering options for the net metering of Time-of-Use PV residential customers and Time-of-Use farm waste customers pursuant to Ordering Clause No. 4 of the Commission’s Order Adopting Net Metering Tariff Provisions and Requiring Additional Filings, issued and effective December 15, 2004 in Case Nos. 04-E-0917 and 04-E-0546.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-E-0917SA5)

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

Net Metering by Rochester Gas and Electric Corporation

I.D. No. PSC-11-05-00013-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 whether to approve or reject, in whole or in part, a proposal filed by Rochester Gas

and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 19.

Statutory authority: Public Service Law, section 66(12)

Subject: Net metering.

Purpose: To implement additional metering options.

Substance of proposed rule: Rochester Gas and Electric Corporation proposes additional metering options for the net metering of Time-of-Use PV residential customers and Time-of-Use farm waste customers pursuant to Ordering Clause No. 4 of the Commission’s Order Adopting Net Metering Tariff Provisions and Requiring Additional Filings, issued and effective December 15, 2004 in Case Nos. 04-E-0917 and 04-E-0546.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(04-E-0917SA6)

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

Photovoltaic and Wind Generation by Central Hudson Gas & Electric Corporation

I.D. No. PSC-11-05-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 15.

Statutory authority: Public Service Law, section 66(12)

Subject: Photovoltaic and wind generation.

Purpose: To clarify rules regarding photovoltaic and wind generation.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Central Hudson or the company) proposes to clarify the definition of eligible rated capacity under Special Provision 14.7 of Service Classification No. 14—Standby Service, and to clarify that demand metered customers whose demand falls below, or is expected to fall below, 10 kW with the installation and/or operation of on sit wind or photovoltaic generation and meeting all other requirements may choose to take service under Special Provision 14.7.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(05-E-0241SA1)

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

Winter Bundled Sales Service Program by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-05-00015-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 whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 9.

Statutory authority: Public Service Law, section 66(12)

Subject: Winter bundled sales service.

Purpose: To implement a new program for Service Classification No. 20 marketers serving firm transportation customers.

Substance of proposed rule: Consolidated Edison Company of New York, Inc. proposes to establish a new Winter Bundled Sales Service program for S.C. No. 20 – Transportation Receipt Service marketers serving firm transportation customers in its service territory.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(05-G-0234SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Customers of Beekman Water Company, Inc.

I.D. No. PSC-11-05-00016-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 whether to approve or reject, in whole or in part, or modify, a petition filed by customers of Beekman Water Company, Inc. to investigate the company's July 16, 2004 application for an increase in rates.

Statutory authority: Public Service Law, section 89-i

Subject: Water rates and charges.

Purpose: To investigate the company's July 16, 2004 application for an increase in rates.

Substance of proposed rule: On February 8, 2005, 77 customers of the Beekman Water Company, Inc. (Beekman or the company) who are residents of The Legends subdivision in the Town of East Fishkill, Dutchess County, filed a petition requesting that the New York State Public Service Commission investigate the company's July 16, 2004 request for an increase in rates for water service provided by Beekman. Beekman currently provides water service to 116 customers and is located in the Town of East Fishkill, Dutchess County. The Commission may approve or reject, in whole or in part, or modify the customers' petition.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(05-W-0162SA1)

Department of State

NOTICE OF ADOPTION

Required Annual Reporting of the Presence of Wild Animals

I.D. No. DOS-01-05-00002-A

Filing No. 201

Filing date: Feb. 28, 2005

Effective date: March 16, 2005

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

Action taken: Addition of Part 820 to Title 19 NYCRR.

Statutory authority: General Municipal Law, section 209-cc; and L. 2002, ch. 680

Subject: Required annual reporting of the presence of wild animals.

Purpose: To set forth the report form and the procedures for reporting the presence of wild animals.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-01-05-00002-P, Issue of January 5, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Thomas J. Wutz, Department of State, 41 State St., Albany, NY 12231, (518) 474-6746, e-mail: twutz@dos.state.ny.us

Assessment of Public Comment

The Department of State received one written comment, from an entertainment company which stages regular live circus performances in New York as well as throughout the United States and other countries. The circus performances regularly feature wild animals, including lions, tigers, snakes and crocodilia, that are subject to the reporting requirements of the proposed rule. The company is licensed by the United States Department of Agriculture as an exhibitor pursuant to Title 7, United States Code, §§ 2131 *et seq.* (the Animal Welfare Act, or AWA). In addition, whenever any circus performances are scheduled in New York, the company must obtain a permit from the Department of Environmental Conservation covering any potentially dangerous animals, and is often required to obtain a permit from the local government in which the performance will occur.

The letter requested that the proposed rule be amended to make all such federally-licensed exhibitors exempt from the reporting requirement. The letter argued that, as all circuses and zoos are licensed pursuant to the Animal Welfare Act, there is no reason to distinguish circuses from zoos, and that circuses should therefore be subject to the same exemption provided for "zoological facilities" set forth in General Municipal Law (GML) § 209-cc. The letter also pointed out that, as licensed circus performances are subject to additional State and local permitting requirements, and in any case are temporary and well-publicized throughout the community (presumably including among emergency response organizations), there seems little reason to subject circuses to the additional reporting requirements of the rule.

The State Fire Administrator has no jurisdiction to amend the proposed rule in the manner suggested by the company's comment. While the AWA expressly includes both circuses and zoos within its licensing requirement, the AWA distinguishes a zoo from a circus. General Municipal Law § 209-cc exempts "zoological facilities" licensed under the AWA. Therefore, the exemption set forth in the GML appears to relate more closely to zoos than to circuses. Moreover, GML § 209-cc does not authorize the State Fire Administrator to further interpret the term "zoological facilities" or to create any exemption beyond those created by statute. The rule merely restates those exemptions. Finally, any reporting requirement that the statute may impose on the company and on those entities similarly situated does not appear to be overly burdensome.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Uniform Standards of Professional Appraisal Practice

I.D. No. DOS-11-05-00001-P

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

Proposed action: This is a consensus rule making to amend section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d(1)(d)

Subject: Uniform standards of professional appraisal practice.

Purpose: To adopt the 2005 edition.

Text of proposed rule:

USPAP 2005

Section 1106.1 (Appraisal Standards) of Title 19 of the NYCRR is amended to read as follows:

§ 1106.1 Appraisal standards.

(a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2003] 2005 edition of the Uniform Standards of Professional Appraisal Practice:

- (1) Definitions;
- (2) Preamble;
- (3) Ethics rule;
- (4) Competency rule;
- (5) Departure rule;
- (6) Jurisdictional exception rule;
- (7) Supplemental standard rule;
- (8) Standard 1 Real Property Appraisal, Development;
- (9) Standard 2 Real Property Appraisal, Reporting;
- (10) Standard 3 Real Property and Personal Property Appraisal Review, Development and Reporting;
- (11) Standard 4 Real Property Appraisal Consulting, Development;
- (12) Standard 5 Real Property Appraisal Consulting, Reporting; and
- (13) Standard 6 Mass Appraisal, Development and Reporting.

(b) The [2003] 2005 edition of the Uniform Standards of Professional Appraisal Practice is published by the Appraisal Foundation, which is authorized by the United States Congress as the source of appraisal standards. Copies may be obtained from:

The Appraisal Foundation
1029 Vermont Avenue, NW, Suite 900
Washington D.C. 20005
tel: 202-347-7722

www.appraisalfoundation.org

The 2005 edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from <http://www.appraisalfoundation.org/html/USPAP2005/toc.htm>

Copies are also available for inspection and copying at the following offices of the Department of State:

Division of Licensing Services
N.Y.S. Department of State
84 Holland Avenue
Albany NY 12208
tel: 518-473-2728

Division of Licensing Services
N.Y.S. Department of State
656 Court Street
Buffalo NY 14202
tel: 716-847-7110

Division of Licensing Services
N.Y.S. Department of State
123 William St.
New York NY 10038
tel: 212-417-5747

Division of Licensing Services
N.Y.S. Department of State
250 Veterans Memorial Highway
Hauppauge NY 11788
tel: 631-952-6579

Text of proposed rule and any required statements and analyses may be obtained from: Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

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

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule making. The New York State Board of Real Estate Appraisal does not expect that any person is likely to object to its adoption because the proposed rule merely implements a nondiscretionary statutory direction.

Section 160-d(1)(d) of the Executive Law provides, in part, that the New York State Board of Real Estate Appraisal shall adopt standards for

the development and communication of real estate appraisals; provided, however, that those standards must, at minimum, conform to the uniform standards of professional appraisal as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Acting pursuant to Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C.A. §§ 3310-3351), the Appraisal Standards Board has adopted and, from time to time, amended the *Uniform Standards of Professional Appraisal Practice*, which set forth the national standards for developing an appraisal and for reporting its results. This proposal will adopt the 2005 edition of the *Uniform Standards of Professional Appraisal Practice* relating to real estate appraisals. Since § 160-d(1)(d) directs that the standards adopted by the State Board of Real Estate Appraisal conform, at a minimum, to the standards promulgated by the Appraisal Standards Board, the State Board does not expect that any person is likely to object to the adoption of the 2005 edition of the *Uniform Standards of Professional Appraisal Practice*. The State Board has previously adopted the 2002 and 2003 editions of the *Uniform Standards of Professional Appraisal Practice*.

Job Impact Statement

Licensed and certified real estate appraisers are currently subject to an 2003 edition of the *Uniform Standards of Professional Appraisal Practice*, which has been revised by the 2005 edition. Accordingly, the New York State Board of Real Estate Appraisal does not believe that adoption of the 2005 edition of the *Uniform Standards of Professional Appraisal Practice* will have any substantial adverse impact on jobs and employment opportunities. In addition, the adoption of these appraisal standards is mandated by § 160-d(1)(d) of the Executive Law.

Office of Temporary and Disability Assistance

EMERGENCY RULE MAKING

Section 8 Housing Vouchers

I.D. No. TDA-11-05-00006-E

Filing No. 202

Filing date: Feb. 28, 2005

Effective date: Feb. 28, 2005

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

Action taken: Amendment of sections 352.3(d)(2), 352.5(b), (f)(2) and (5)(i); and addition of section 352.3(d)(2)(ii) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 355(3)

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

Specific reasons underlying the finding of necessity: Under the current shelter rules, recipients of public assistance who participate in the Section 8 Voucher Program receive a lesser section 8 subsidy than other families based solely on the fact that they also receive public assistance. As a result of the reduced section 8 subsidy, a family receiving public assistance will receive a greater amount of assistance but will also receive lower food stamp benefits. The proposed amendments are aimed at ensuring that public assistance recipients who are in receipt of section 8 subsidies are not disadvantaged when compared to non-public assistance recipients with the same level of income.

Subject: Section 8 housing vouchers.

Purpose: To establish a reasonable shelter schedule for persons and families receiving temporary assistance and rent subsidies under the Section 8 Voucher Program.

Text of emergency rule: Section 352.3(d)(2)(i) is amended to read as follows:

- (a) [Section 236 rental assistance program.] *Subsidized housing other than* section 8 housing vouchers [, section 8 housing program (noncertificate)]. The rent allowance for tenants of housing subsidized under [the section 236 rental assistance program or the section 8] a housing assistance

payments program, *except as provided in subparagraph (ii) of this paragraph*, is the amount of rent actually paid (exclusive of the subsidy) but not more than the amount in the applicable schedule in subdivisions (a) and (b) of this section.

Section 352.3(d)(2)(ii) is added to read as follows:

(ii) *Section 8 voucher program.*

(a) *The rent for recipients whose rental housing payments are subsidized under the section 8 voucher program (not including a recipient participating in the program of special allowances for owners of manufactured homes) shall be the amount actually paid, but not in excess of the amount (rounded to the nearest whole dollar) equal to 30 percent of the applicable standard of need by family size and district of residence, considering only the SA-2a, SA-2b, SA-2c schedules contained in section 352.2(d) of this Part, and the local agency monthly shelter allowance schedule with children, exclusive of any supplement. For the purpose of this subparagraph, the allowance amounts are those in Office regulation and in effect on the filing date of this subparagraph.*

(b) *Subparagraph (a) of this subdivision shall not apply to recipients whose section 8 vouchers are provided by public housing authorities or other local section 8 voucher issuing agencies that routinely determined the tenants' share of the rent due and payable for months commencing on or before October 1, 2004 to be the local agency shelter maximums under subdivision (a) of this section.*

(c) *The Office shall develop an administrative process to certify whether subparagraph (a) or (b) shall apply to each individual public housing authority or other local section 8 voucher issuing agency.*

The introductory language of section 352.5(b) and sections 352.5(f)(2) and 352.5(f)(5)(i) are amended to read as follows:

(b) Fuel for heating allowances.

Each social services district must grant an allowance for fuel for heating to a public assistance applicant/recipient or self-maintaining grantee in receipt of public assistance for a dependent child or children when it is documented that the applicant/recipient/grantee is the tenant of record, as defined in subdivision (a) of this section, with primary responsibility for payment of the residential heating costs. A fuel for heating allowance must also be granted to a public assistance applicant/recipient/grantee whose utility heating bill may include costs for service for the applicant/recipient/grantee's own residential unit and for space outside that unit or whose non-utility heating bill includes costs for the applicant/recipient/grantee's own residential unit and for other residential units when it is documented that the applicant/recipient/grantee is the tenant and customer of record as defined in subdivision (a) of this section. When a fuel for heating allowance is granted to an applicant/recipient/grantee who is the customer of record for a utility bill which may include costs for service for the applicant/recipient/grantee's own residential unit and for space outside that unit, the social services district must determine whether a referral for a shared meter investigation, in accordance with the provisions of section 52 of the Public Service Law, is appropriate. [A fuel for heating allowance is not granted to an applicant/recipient/grantee budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part.] To have primary responsibility for the payment of residential heating costs, the applicant/recipient/grantee must be the customer of record, as defined in subdivision (a) of this section, for the residential heating bill with a home energy vendor. Fuel for heating allowances must be provided on a 12-month heating season (October 1st September 30th) in accordance with the following schedules and must be based upon the applicant/recipient/grantee's primary residential heating source:

(2) Payment must be provided as a nonrecoupable grant when it is documented that during the period specified in paragraph (1) of this subdivision the recipient has fully applied the public assistance grant to purposes intended to be included in such grant. Such documentation for recipients [not budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part] must include proof of payment of: an amount at least equal to the combined Home Energy Allowance and Supplemental Home Energy Allowance (HEA and SHEA) budgeted in the public assistance grant to domestic (lights, cooking, hot water) energy costs; the monthly fuel for heating allowance budgeted in the public assistance grant to incurred heating costs; and the monthly shelter allowance budgeted in the public assistance grant to shelter costs. In addition, there must be no other evidence of mismanagement. Documentation for recipients budgeted in accordance with the provisions outlined in section 352.3(d)(2)(ii) of this Part must include proof of payment of: an amount at least equal to the combined Home Energy Allowance and Supplemental Home Energy Allowance (HEA and SHEA) budgeted in the

public assistance grant to domestic energy costs (lights, cooking, hot water); an amount at least equal to the shelter allowance budgeted in the public assistance grant towards shelter, heating, water, and other shelter-related items covered by the federal Department of Housing and Urban Development utility allowance. In addition, there must be no other evidence of mismanagement.

(i) if the recipient's utility bill represents "heat only," [and the recipient does not reside in or is not budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part,] the recipient's monthly fuel for heating allowance is removed from the recipient's monthly grant. [If the recipient's utility bill represents "heat only" and the recipient does reside in Section 8 certificate housing or is budgeted in accordance with section 352.3(d)(2)(ii) of this Part, the balance of the shelter allowance minus the actual rent obligation, up to an amount equal to the appropriate fuel allowance schedule set forth in subdivision (b) of this section for the appropriate heating type and public assistance household size, is removed from the grant.] Heating costs paid by the district which exceed the amount removed from the recipient's grant are considered to be overpayments subject to recoupment in accordance with section 352.31(d) of this Part.

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 May 28, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

Regulatory Impact Statement

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning financial support services were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 provides that the commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 131(1) of the SSL requires social services officials, insofar as funds are available therefor, to provide adequately for those unable to maintain themselves.

Section 355(3) of the SSL authorizes OTDA to promulgate regulations for the Family Assistance (FA) program.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that the Office establish rules, regulations and policies so that adequate provision could be made for those persons unable to provide for themselves and that, whenever possible, such persons can be restored to a condition of self-support and self-care.

3. Needs and Benefits:

The regulations of the Housing and Urban Development (HUD) Section 8 voucher program provide that the tenant's share of the rent is the highest of three calculated amounts: (1) 10% of the family's total income; (2) 30% of the family's gross income adjusted to reflect certain deductions; or (3) in states (such as New York) that pay separate, identifiable shelter allowances for rent up to the amount of the actual charges, the maximum allowable shelter allowance. In New York, the third of these amounts, the applicable maximum shelter and fuel allowances, are almost invariably the highest of the three and are the amount that HUD requires to be charged.

This Office has recently become aware that housing authorities throughout the State have varied greatly in their implementation of HUD requirements, with many charging 30% of income and applying HUD adjustments instead of using New York's maximum shelter and fuel allowances, resulting in vastly differing amounts paid by social services districts for shelter allowances. This disparity caused by the failure to charge tenants the highest of the three calculated amounts affects the amount of the federal Section 8 subsidy, the amount of the recipient's income when calculating food stamp benefits and the amount of assistance owed by the recipient to the social services district and State for past

assistance under various provisions of State law providing for recovery or recoupment.

HUD had previously directed housing authorities to recalculate the rent payable by public assistance recipients to conform to its regulations by January 1, 2005. The increases in rent would have strained the budgets of the affected social services districts, which have not had sufficient time to prepare for this cost, impairing their ability to meet administrative obligations and to provide services and supports to recipients, while simultaneously reducing federal subsidies and the food stamp allotments of Section 8 tenants.

These changes to the State's regulations governing the shelter allowance of applicants and recipients of public assistance who participate in the Section 8 voucher program provide that New York will pay a rent allowance of up to 30% of the total of the maximum allowances otherwise available for basic needs, shelter, fuel and energy. This will provide a measure of uniformity and insure that participants in the voucher program will not receive a lower subsidy than other families based only on the fact that they also receive public assistance. The reduced Section 8 voucher subsidy that would otherwise be paid on January 1, 2005, would increase public assistance benefits without increasing spending power. Since food stamp benefits are generally reduced by any increase in income, the change would produce a reduction in food stamps. Public assistance families who participate in the Section 8 voucher program are therefore likely to be disadvantaged in a way that non-public assistance families with the same level of income are not. The Office has taken into consideration the effect of this change on the income of public housing authorities. For public housing authorities that were not charging the applicable New York State maximum shelter and fuel allowances, these changes will produce a moderate increase in rental income, although not so large as would have been generated by using the State's maximum allowances. The Office recognizes that some public housing authorities have already been calculating the tenant's share using the local district shelter maximums. If this rule were applied to those public housing authorities, the resulting substantial reduction in shelter allowances would be highly disruptive. In order to mitigate any negative financial impact of this change on those authorities, and since their tenants have already absorbed any negative impact on the food stamps benefit, this change includes a grandfathering provision. The Office will develop an administrative process for determining whether or not a public housing authority or other local Section 8 voucher issuing agency will qualify under the grandfathering provision.

4. Costs:

The regulatory change will result in cost avoidance to the State and local governments. If the change is not made and housing authorities are allowed to increase rents to the maximums allowed for each social services district, it is projected that there will be additional costs of approximately \$52 million gross annually, with a State and local share of \$19 million each and a federal share of \$14 million.

Adoption of the proposed amendments would potentially result in a slight increase in costs due to the need to revise the budgeting methodology for determining the amount of assistance to be provided to public assistance recipients. Based on an extensive analysis of current average shelter allowances, case sizes and the current resident rent calculation worksheet, it is anticipated that the regulatory change will result in an average shelter increase of \$12 per month per recipient. Gross annual costs as a result of this increase are projected to be \$5.25 million with a State and local share of approximately \$1.9 million each and a federal share of \$1.45 million.

Taking into account the cost avoidance plus the anticipated cost associated with the amendments, the net result of the regulatory change is a cost avoidance of \$47 million gross with the State and local shares estimated to be \$17 million each and the federal share estimated to be \$13 million.

5. Local Government Mandates:

This change will result in local social services districts having to rebudget the benefits for individuals and families receiving Section 8 voucher subsidies. Although local social services districts already must communicate with the public housing authorities or other local Section 8 voucher issuing agencies in their districts, a greater level of communication will be required at the initial implementation stage of this change.

6. Paperwork:

Local social services districts will have to rebudget affected cases and provide timely and adequate notice to those households. The change is likely to result in increased requests for administrative fair hearings, at least initially.

Those public housing authorities or other local Section 8 voucher issuing agencies which claim to qualify under the grandfathering provision

of the proposed regulations must verify that they qualify and will have to provide this Office and/or the local social services office with documentation necessary to validate that claim.

7. Duplication:

This regulation does not duplicate any other requirements. Rather, it establishes a separate budgeting methodology that applies only to certain public assistance households with Section 8 voucher program subsidies.

8. Alternatives:

The alternative is to leave the budgeting unchanged. This is not a desirable alternative since it results in public assistance households with Section 8 voucher program subsidies being treated less favorably than Section 8 voucher families who do not receive public assistance.

9. Federal Standards:

There are no federal standards that impact OTDA's decisions about how to determine a family's shelter allowance.

10. Compliance Schedule:

The changes will be effective when the regulations become effective and local social services districts will be required to implement the changes no later than the next contact with the family.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed amendments will have no impact on small businesses but will have an impact on the 58 local social services districts in the State. The proposed amendments also will have an impact on the federal offices of the Department of Housing and Urban Development located in this State that issue section 8 housing vouchers.

2. Compliance Requirements:

The proposed amendments will require social services districts to rebudget the public assistance benefits for individuals and families receiving section 8 housing vouchers unless the issuing agency is exempt under the grandfathering provision of the proposed regulations.

3. Professional Services:

The proposed amendments will not require local governments to incur costs for additional professional services.

4. Compliance Costs:

The proposed amendments will not require additional compliance costs for small businesses. Local social services districts will experience an additional workload during the implementation stage of this change. The costs associated with this additional workload will not be extensive but cannot be projected at this time.

5. Economic and Technological Feasibility:

Local governments have the electronic and technological ability to comply with these regulations when they become effective.

6. Minimizing Adverse Impact:

There will be no adverse impact on small businesses. Local social services districts will have an initial increased workload but the workload will stabilize after the proposed amendments become operational.

7. Small Business and Local Government Participation:

Social services districts were not made aware of the proposed amendments prior to the regulations being adopted on an emergency basis. Upon filing the emergency regulations, the social services districts will be made aware of the proposed amendments and it is anticipated that they will support the amendments.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed regulations will affect the 44 rural social services districts in the State.

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

The proposed regulations will require social services districts to rebudget the public assistance benefits for individuals and families receiving section 8 housing vouchers unless the issuing agency is exempt under the grandfathering provision of the proposed regulations. No new professional services will be imposed on the social services districts in rural areas in order for those districts to comply with the proposed regulations.

3. Costs:

Local social services districts in rural areas will experience an additional workload during the implementation stage of the change. The costs associated with this additional workload will not be extensive but cannot be projected at this time.

4. Minimizing adverse impact:

The proposed regulations will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

Social services districts in rural areas were not made aware of the proposed amendments prior to the regulations being adopted on an emergency basis. Upon filing the emergency regulations, the social services districts in rural areas will be made aware of the proposed amendments and it is anticipated that they will support the amendments.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.