RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-15-00003-A
Filing No. 894
Filing Date: 2015-10-13
Effective Date: 2015-10-28

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. CVS-13-15-00003-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-15-00004-A
Filing No. 890
Filing Date: 2015-10-13
Effective Date: 2015-10-28

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a subheading and positions from and classify positions in the exempt class.

Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. CVS-13-15-00004-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-15-00005-A
Filing No. 893
Filing Date: 2015-10-13
Effective Date: 2015-10-28

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. CVS-13-15-00005-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-15-00006-A
Filing No. 891
Filing Date: 2015-10-13
Effective Date: 2015-10-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. CVS-13-15-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-15-00007-A
Filing No. 895
Filing Date: 2015-10-13
Effective Date: 2015-10-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. CVS-13-15-00007-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Supplemental Military Leave Benefits

I.D. No. CVS-13-15-00014-A
Filing No. 889
Filing Date: 2015-10-13
Effective Date: 2015-10-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of sections 21.15 and 28-1.17 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Supplemental military leave benefits.
Purpose: To extend the availability of supplemental military leave benefits for certain New York State employees until December 31, 2015.
Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. CVS-13-15-00014-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-14-15-00006-A
Filing No. 892
Filing Date: 2015-10-13
Effective Date: 2015-10-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the April 8, 2015 issue of the Register, I.D. No. CVS-14-15-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-14-15-00007-A
Filing No. 897
Filing Date: 2015-10-13
Effective Date: 2015-10-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text or summary was published in the April 8, 2015 issue of the Register, I.D. No. CVS-14-15-00007-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-14-15-00008-A
Filing No. 896
Filing Date: 2015-10-13
Effective Date: 2015-10-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from the exempt and non-competitive classes.
Text or summary was published in the April 8, 2015 issue of the Register, I.D. No. CVS-14-15-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Valuation of Individual and Group Accident and Health Insurance Reserves

I.D. No. DFS-43-15-00004-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 Part 94 (Regulation 56) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310 and 4517

Subject: Valuation of Individual and Group Accident and Health Insurance Reserves.

Purpose: To adopt the 2012 Group Long-Term Disability Valuation Table.

Substance of proposed rule (Full text is posted at the following State website:http://www.dfs.ny.gov): Section 94.3 is amended to include the definition of Group Long-Term Disability Income Contract.

Section 94.4(b)(1)(ii)(a) is amended for technical changes (i.e., renumbering) and greater clarity.

Section 94.4(b)(1)(ii)(b) is amended for technical changes (i.e., renumbering) and greater clarity, and specifies that this section applies to group disability income claims that are not group long term disability income claims.

Section 94.4(b)(1)(ii) is amended to add clauses (c), (d) and (e). These clauses provide the reserve requirements for group long-term disability income claims incurred prior to October 1, 2014, incurred on or after October 1, 2014 and prior to January 1, 2017, and incurred on or after January 1, 2017, respectively.

Section 94.10(a)(2)(i)(b) is amended to clarify that this section only applies to group disability income claims.

A new clause (c) is added to Section 94.10(a)(2)(i) to provide the reserve requirements for group long-term disability income claims.

Section 94.10(c)(2) is amended to update the reference to the 1983 Group Annuity Mortality Table in section 99.10(i)(4) of this Title (Insurance Regulation 151).

Section 94.10(c)(3) is amended to update the reference to the 1994 Group Annuity Mortality Static Table in section 99.10(i)(5) of this Title (Insurance Regulation 151).

Text of proposed rule and any required statements and analyses may be obtained from: Amanda Fenwick, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: amanda.fenwick@dfs.ny.gov

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

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

Consensus Rule Making Determination

This rulemaking adopts the 2012 Group Long-Term Disability Valuation Table for group long-term disability income claims incurred on or after January 1, 2017, or if optionally elected, on or after October 1, 2014, replacing the 1987 Commissioners Group Disability Table (87CGDT). The proposed table is the same as the table that was adopted by the NAIC in 2014, and such table was vetted with industry during the NAIC adoption process. Adoption of this table will result in the same reserve requirements for both domestic and non-domestic insurers doing business in New York. For these reasons, no person or entity is likely to object to the adoption of this rulemaking.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act ("SAPA") § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

Job Impact Statement

The amendment to Insurance Regulation 56 should have no impact on jobs and employment opportunities. This rulemaking adopts the 2012 Group Long-Term Disability Valuation Table for group long-term disability income claims incurred on or after January 1, 2017, or if optionally elected, on or after October 1, 2014, replacing the 1987 Commissioners Group Disability Table (87CGDT). Insurers should not need to hire additional employees or independent contractors to comply with these new standards.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Immediate Need for Personal Care Services (PCS) and Consumer Directed Personal Assistance (CDPA)

I.D. No. HLT-43-15-00003-P

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

Proposed Action: Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); Social Services Law, sections 363-a(2), 365-a(2)(e) and 365-f

Subject: Immediate Need for Personal Care Services (PCS) and Consumer Directed Personal Assistance (CDPA).

Purpose: To implement 2015 State law changes regarding Medicaid applicants and recipients with immediate needs for PCS or CDPA.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): The proposed regulations amend the Department's personal care services regulations by adding paragraphs (7) and (8) to 18 NYCRR § 505.14(b). They also amend the Department's consumer directed personal assistance program regulations by adding subdivisions (k) and (l) to 18 NYCRR § 505.28.

New paragraph 505.14(b)(7) sets forth expedited procedures for social services districts' determinations of Medicaid eligibility for applicants with an immediate need for personal care services ("PCS").

Clause 505.14(b)(7)(i)(a) defines the term "Medicaid applicant with an immediate need for personal care services." The term includes two groups of individuals who seek Medicaid coverage: those who are not currently authorized for any type of Medicaid coverage; and those who are currently authorized for Medicaid coverage but only for community-based coverage not including coverage for long-term care services such as PCS. In addition, these individuals must present a physician's order documenting the need for assistance with certain personal care services functions and attest to the social services district, on a required form, that they have no informal caregivers, are not receiving PCS from a home care services agency, have no adaptive or specialized equipment or supplies to meet their needs, and have no third party insurance or Medicare benefits available to pay for needed assistance.

Clause 505.14(b)(7)(i)(b) defines the term "complete Medicaid application." This term means a signed Medicaid application and all documentation necessary for the district to determine Medicaid eligibility. However, an applicant who would otherwise be required to document his or her accumulated resources could attest to the current value of any real property and to the current dollar amount of any bank accounts. If inconsistencies exist between the information to which the applicant attests and any information that the Department or the district may subsequently obtain from other sources, the individual would be required to document such resources.

Subparagraph 505.14(b)(7)(ii) requires the social services district to take certain action as soon as possible but no later than three calendar days after receipt of the Medicaid application, physician's order and attestation form. Within this period, the district must determine whether the applicant is a "Medicaid applicant with an immediate need for personal care services" and, if so, whether the applicant has submitted a "complete Medicaid application." When the district determines that the individual is a Medicaid applicant with an immediate need for personal care services

but has not submitted a complete Medicaid application, the district must also within this time period notify the applicant of the additional documentation the applicant must provide; the date by which the applicant must provide such documentation; and that the district will determine the applicant's Medicaid eligibility within seven calendar days after receipt of the documentation.

Subparagraph 505.14(b)(7)(iii) requires the social services district to determine whether a Medicaid applicant with an immediate need for personal care services is eligible for Medicaid, including Medicaid coverage of community-based long term care services, and notify the applicant of such determination. The district must make this determination and notify the applicant as soon as possible but no later than seven calendar days after receipt of a complete Medicaid application.

Subparagraph 505.14(b)(7)(iv) provides that the social services district must comply with the expedited personal care services assessment procedures set forth in new 505.14(b)(8) for each Medicaid applicant with an immediate need for PCS who the district determines is eligible for Medicaid, including Medicaid coverage of community-based long-term care services.

The proposed regulations also add paragraph (8) to Section 505.14(b), which sets forth expedited personal care services assessment procedures for Medicaid recipients with an immediate need for personal care services. These procedures would apply to Medicaid recipients seeking personal care services who are exempt or excluded from enrollment in a managed long term care plan or managed care provider as well as Medicaid recipients who are not exempt or excluded from enrollment in such a plan or provider but who have not yet been enrolled.

Subparagraph 505.14(b)(8)(ii) requires social services districts to perform the following personal care services assessment activities for Medicaid recipients with immediate needs for personal care services:

- Obtain or complete a social assessment and nursing assessment;
- Refer the case to the local professional director, or designee, if it involves continuous personal care services or live-in 24 hour personal care services;
- Determine whether the recipient is eligible for personal care and, if so, the amount and duration of services to be authorized;
- Provide notice to the recipient of the district's determination; and
- Authorize services to be provided to those recipients who are determined eligible for personal care services. With respect to those recipients who are neither exempt nor excluded from enrollment in a managed long term care plan or managed care entity, the district must authorize services to be provided until the recipient is enrolled in such a plan or provider.

Subparagraph 505.14(b)(8)(iii) sets forth a time period of twelve calendar days within which districts must perform the assessment activities set forth above. The commencement of the twelve day period depends on whether the individual was originally a Medicaid applicant with an immediate need for personal care services. If so, the twelve day period commences on the day that the district determined that the applicant was eligible for Medicaid, including Medicaid coverage of community-based long term care services. For other Medicaid recipients with an immediate need for personal care services, the twelve day period commences when the district has received the physician's order for personal care services and the form that attests to the recipient having an immediate need for personal care services.

The proposed regulations make similar revisions to the Department's regulations governing the consumer directed personal assistance program, which are at 18 NYCRR § 505.28. New subdivision 505.28(k) sets forth expedited procedures for social services districts' determinations of Medicaid eligibility for applicants with an immediate need for consumer directed personal assistance. These expedited procedures are similar to those set forth in proposed new 505.14(b)(7) for Medicaid applicants with an immediate need for personal care services. In addition, new subdivision 505.28(l) sets forth expedited consumer directed assistance assessment procedures for Medicaid recipients with immediate needs for consumer directed personal assistance. These expedited assessment procedures are similar to those set forth at proposed new 505.14(b)(8) for Medicaid recipients with an immediate need for personal care services.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) empower the Department to adopt regulations implementing the State's Medical Assistance ("Medicaid") program. Under SSL § 366-a(12), the Department must develop expedited procedures for social services districts' determinations of Medicaid eligibility for applicants with immediate needs for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Under SSL § 364-j(31), the Department must provide PCS and CDPA, as appropriate, to Medicaid recipients with immediate needs for such services pending approval by managed care providers under SSL § 364-j or managed long term care ("MLTC") plans under Public Health Law § 4403-f. Under SSL § 365-a(2)(e)(iii), the Department must provide assistance, consistent with SSL § 364-j(31), to Medicaid PCS recipients who are transitioning to receive care from MLTC plans.

Legislative Objectives:

The Legislature's objective in enacting the statutory authority was two-fold: to expedite Medicaid eligibility determinations for Medicaid applicants with immediate needs for PCS or CDPA, and, for those Medicaid applicants with immediate needs for either service who are determined eligible for Medicaid, to require the provision of PCS and CDPA, as appropriate, pending the individuals' enrollment in a managed care provider or MLTC plan. The proposed regulations are consistent with the Legislature's objectives.

Needs and Benefits:

The purpose of the proposed regulations is to implement the Legislature's recent amendments to the SSL with regard to Medicaid applicants and recipients with immediate needs for PCS or CDPA.

The Legislature added new SSL § 366-a(12), as follows:

The commissioner shall develop expedited procedures for determining medical assistance eligibility for any medical assistance applicant with an immediate need for personal care or consumer directed personal assistance services. . . Such procedures shall require that a final eligibility determination be made within seven days of the date of a complete medical assistance application.

See Ch. 57, pt. B, § 36-c.

The Legislature also added SSL § 364-j(31)(a) as follows:

The commissioner shall require managed care providers. . .managed long term care plans. . . and other appropriate long-term service programs to adopt expedited procedures for approving personal care services for a medical assistance recipient who requires immediate personal care or consumer directed personal assistance services. . .and provide such care or services as appropriate, pending approval by such provider or program.

See Ch. 57, pt. B, § 36-b.

In addition, the Legislature amended SSL § 365-a(2)(e)(iii) as follows:

The commissioner shall provide assistance to persons receiving personal care services under this paragraph who are transitioning to receiving care from a managed long term care plan certified pursuant to section forty-four hundred three-f of the public health law, consistent with subdivision thirty-one of section three hundred sixty-four-j of this title.

See Ch. 57, pt. B, § 36-a.

The proposed regulations would reflect the Legislature's mandate in SSL § 366-a(12) for expedited Medicaid eligibility determinations for Medicaid applicants who have immediate needs for PCS or CDPA. It would also reflect the Legislature's mandate in SSL §§ 364-j(31)(a) and 365-a(2)(e)(iii) that PCA and CDPA be provided to Medicaid recipients in immediate need of such services prior to enrollment in a managed care entity.

Costs:

Costs to Regulated Parties:

Regulated parties are social services districts that determine whether Medicaid applicants are eligible for Medicaid and whether Medicaid recipients are eligible for PCS or CDPA. Social services districts may incur administrative costs to comply with the expedited assessment procedures set forth in the proposed regulations. Districts would not incur any additional expense for the cost of PCS or CDPA provided to Medicaid recipients in immediate need of such services.

Costs to State Government:

The Department estimates that the proposed regulations could increase the State share of Medicaid costs by approximately $328,000 annually.

This cost estimate assumes that social services districts would annually authorize PCS or CDPA on a fee-for-service basis for an additional 88 newly eligible Medicaid recipients who the districts determine to be in immediate need of such services. This figure derives from Medicaid fee-for-service data for State Fiscal Years 2012-13 and 2013-14, which indicate that approximately 175 new Medicaid recipients were authorized annually for PCS and CDPA. The average monthly per-person cost of such services was $1,886.00. The Department assumed that, under the proposed regulations, fifty percent of the approximately 175 newly eligible Medicaid recipients (i.e. 88 recipients) would be found to be in "immediate need" of PCS or CDPA. The estimated annual Medicaid State share cost of providing PCS and CDPA to these 88 newly eligible Medicaid recipients would be approximately $996,000.00.

The Department estimates that this potential annual Medicaid State share cost of $996,000.00 would be reduced to the extent that Medicaid recipients in nursing or other facilities would be found to be in "immediate need" of PCS or CDPA and could be discharged home more quickly and with less costly PCS or CDPA. Based on Department historical data, approximately 7,980 nursing facility or adult home residents received PCS or CDPA upon discharge. The average monthly per person cost of care in such facilities was $3,879.00 whereas the average monthly cost of PCS or CDPA was $537.00, an average monthly savings of $3,342.00. For every 400 persons (roughly five percent of 7,980) who may be discharged one month more quickly from institutional settings to receive PCS or CDPA at home, the estimated annual gross federal and State Medicaid cost savings could be $1.3 million (400 x $3,342). The estimated Medicaid State share savings would be half of this total, or $668,400.00. When subtracted from the annual estimated Medicaid State share costs of $996,000.00, this results in an estimated net increase in Medicaid State share costs of $328,000.00.

Costs to Local Government:

Social services districts may incur administrative costs to comply with the expedited assessment procedures set forth in the proposed regulations. Districts would not incur any additional expense for the cost of PCS or CDPA provided to Medicaid recipients in immediate need of such services. State law limits the amount that districts must pay for Medicaid services provided to district recipients.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The proposed regulations require that social services districts perform expedited Medicaid eligibility determinations for Medicaid applicants who the districts determine have an immediate need for PCS or CDPA. Districts would also have to perform expedited PCS or CDPA assessments for Medicaid recipients who the districts determine have an immediate need for either service, and authorize PCS or CDPA for Medicaid recipients who are eligible for such services.

Paperwork:

The proposed regulations do not impose any reporting requirements on social services districts.

Duplication:

The proposed regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

There are no significant alternatives to the proposed regulations.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

Social services districts should be able to comply with the regulations when they become effective.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulations affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

Compliance Requirements:

Pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), social services districts would be required to perform expedited Medicaid eligibility determinations for Medicaid applicants who have an immediate need for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Medicaid applicants with an immediate need for PCS or CDPA include those who are not currently authorized for any type of Medicaid coverage as well as those who are currently authorized for Medicaid but only for community-based Medicaid coverage without coverage for long term care services.

Within three calendar days after receipt of the Medicaid application, physician's order and required form attesting to the Medicaid applicant's "immediate need," the district would be required to determine whether the Medicaid applicant is a Medicaid applicant with an immediate need for PCS or CDPA and, if so, whether the applicant has submitted a complete Medicaid application. If the applicant has not submitted a complete Medicaid application, the district must notify the applicant, within this three day period, of the additional documentation that the applicant must submit, the date by which the applicant must provide such documentation, and that the district will determine the applicant's Medicaid eligibility within seven calendar days after receipt of such documentation. No later than seven calendar days after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, the district must determine whether the applicant is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of that determination.

Pursuant to proposed new §§ 505.14(b)(8) and 505.28(l), social services districts would be required to perform expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for PCS or CDPA. Medicaid recipients with immediate needs for PCS or CDPA include Medicaid applicants with immediate needs for PCS or CDPA who the districts have determined, pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services, as well as other Medicaid recipients who have been determined to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Medicaid recipients with immediate needs for PCS or CDPA may be exempt or excluded from enrollment in a managed long term care plan or a managed care provider or not so exempt or excluded but not yet enrolled in any such plan or provider.

Within twelve calendar days after determining, pursuant to proposed new §§ 505.14(b)(7) or 505.28(k), that a Medicaid applicant with an immediate need for PCS or CDPA is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, the social services district would be required to perform an expedited PCS or CDPA assessment to determine whether the recipient is eligible for PCS or CDPA and, if so, the level and amount of services to be authorized. Within this twelve day period, the district would also be required to notify the recipient of the district's determination and, for recipients found eligible for PCS or CDPA, authorize the services to be provided. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services and arrange for their provision until the recipient is enrolled in such managed long term care plan or provider.

Professional Services:

Social services would need to have contracts with sufficient number of Medicaid-enrolled providers to furnish authorized PCS to Medicaid recipients with immediate needs for such services. The proposed regulations would not otherwise require social services to obtain new or additional professional services.

Compliance Costs:

The proposed regulations would not impose capital costs on social services districts. Social services districts may incur administrative costs to comply with the proposed regulations. These administrative costs would be associated with districts' performance of expedited Medicaid eligibility determinations of Medicaid applicants with immediate needs for PCS or CDPA as well expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for such services.

Economic and Technological Feasibility:

There are no additional economic costs or technology requirements associated with the proposed regulations.

Minimizing Adverse Impact:

The proposed regulations should not have an adverse economic impact on social services districts. Each social services district's share of the cost of total Medicaid expenditures for PCS and CDPA is limited to the district's Medicaid "cap" amount established pursuant to State law. The proposed regulations would not require social services districts to incur any additional Medicaid expenditures for PCS or CDPA in excess of their Medicaid cap amounts.

Small Business and Local Government Participation:

The Department shared the proposed regulations with social services districts prior to publication.

Cure Period:

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

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 or fewer persons per square mile.

The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins

Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 or fewer persons per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), rural social services districts would be required to perform expedited Medicaid eligibility determinations for Medicaid applicants who have an immediate need for personal care services ("PCS") or consumer directed personal assistance ("CDPA"). Medicaid applicants with an immediate need for PCS or CDPA include those who are not currently authorized for any type of Medicaid coverage as well as those who are currently authorized for Medicaid but only for community-based Medicaid coverage without coverage for long term care services.

Within three calendar days after receipt of the Medicaid application, physician's order and required form attesting to the Medicaid applicant's immediate need for services, the district would be required to determine whether the Medicaid applicant is a Medicaid applicant with an immediate need for PCS or CDPA and, if so, whether the applicant has submitted a complete Medicaid application. If the applicant has not submitted a complete Medicaid application, the district must notify the applicant, within this three day period, of the additional documentation that the applicant must submit, the date by which the applicant must provide such documentation, and that the district will determine the applicant's Medicaid eligibility within seven calendar days after receipt of such documentation. No later than seven calendar days after receipt of a complete Medicaid application from a Medicaid applicant with an immediate need for PCS or CDPA, the district must determine whether the applicant is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, and notify the applicant of that determination.

Pursuant to proposed new §§ 505.14(b)(8) and 505.28(l), rural social services districts would be required to perform expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for PCS or CDPA. Medicaid recipients with immediate needs for PCS or CDPA include Medicaid applicants with immediate needs for PCS or CDPA who the districts have determined, pursuant to proposed new §§ 505.14(b)(7) and 505.28(k), to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services, as well as other Medicaid recipients who have been determined to be eligible for Medicaid, including Medicaid coverage of community-based long-term care services. Medicaid recipients with immediate needs for PCS or CDPA may be exempt or excluded from enrollment in a managed long term care plan or a managed care provider or not so exempt or excluded but not yet enrolled in any such plan or provider.

Within twelve calendar days after determining, pursuant to proposed new §§ 505.14(b)(7) or 505.28(k), that a Medicaid applicant with an immediate need for PCS or CDPA is eligible for Medicaid, including Medicaid coverage of community-based long-term care services, the social services district would be required to perform an expedited PCS or CDPA assessment to determine whether the recipient is eligible for PCS or CDPA and, if so, the level and amount of services to be authorized. Within this twelve day period, the district would also be required to notify the recipient of the district's determination and, for recipients found eligible for PCS or CDPA, authorize the services to be provided. If the recipient is subject to enrollment in a managed long term care plan or managed care provider, the district would be required to authorize the services until the recipient is enrolled in such plan or provider.

Costs:

Rural social services districts would not incur initial capital costs to comply with the proposed regulations. Districts may incur administrative costs to comply with the proposed regulations. These administrative costs would be associated with districts' performance of expedited Medicaid eligibility determinations of Medicaid applicants with immediate needs for PCS or CDPA as well expedited PCS or CDPA assessments of Medicaid recipients with immediate needs for such services.

Minimizing Adverse Impact:

The proposed regulations should not have an adverse economic impact on rural social services districts. Each social services district's share of the cost of total Medicaid expenditures for PCS and CDPA is limited to the district's Medicaid "cap" amount established pursuant to State law. The proposed regulations would not require rural social services districts to incur any additional Medicaid expenditures for PCS or CDPA in excess of their Medicaid cap amounts.

Rural Area Participation:

The Department shared the proposed regulations with rural social services districts prior to publication.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed regulations, that they would not have a substantial adverse impact on jobs and employment opportunities.

Department of Labor

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Methods of Payment of Wages

I.D. No. LAB-21-15-00009-RP

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

Proposed Action: Addition of Part 192 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 199

Subject: Methods of Payment of Wages.

Purpose: This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards.

Text of revised rule: *Part 192 Methods of Payment of Wages*

Subpart-1 General Provisions

§ 192-1.1 Permissible Methods of Payment

Employees may be paid wages by employers using the following permissible methods:

(a) Cash;

(b) Check;

(c) Direct Deposit; or

(d) Payroll Debit Card.

§ 192-1.2 Definitions

For the purposes of this part:

(a) Payroll Debit Card shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer, and to which transfers of the employee's wages are made on an isolated or recurring basis.

(b) Consent shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the method of payment. Consent may be withdrawn at any time, provided however, that the employer shall be given a reasonable period of time, but no longer than two full pay periods, to finalize such change.

(c) No Cost shall mean that an employee can access his or her wages, in full, without encumbrances, costs, charges, or fees.

(d) Local Access shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee's work location or home, and without unreasonable restraint by the employer or its agent.

(e) Employee shall be as it is defined in Section 190 of the Labor Law and shall not include any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of the dollar threshold contained in Section 192(2) of the Labor Law, or an employee working on a farm not connected with a factory.

(f) Direct Deposit shall mean the transfer of wages into an account, of the employee's choosing, of a financial institution.

(g) Reasonable Intervals shall mean not less frequently than annually.

(h) Negotiable instrument shall be as it is defined in Section 3-104 of the New York State Uniform Commercial Code.

§ 192-1.3 Written Notice and Consent

(a) Notice of methods of payment. An employer who uses methods of payments other than cash or check shall provide employees with a written notice that identifies the following:

(1) a plain language description of all of the employee's options for receiving wages;

(2) a statement that the employer may not require the employee to accept wages by payroll debit card or by direct deposit;

(3) a statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her wages in full; and

(4) a list of locations where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence or place of work.

(b) Consent. An employer who offers one or more methods of payment of wages that require consent shall obtain such consent in writing and shall ensure that:

(1) It obtains the employee's informed consent without intimidation, coercion, or fear of adverse action by the employer for refusal to accept payment of wage by direct deposit or payroll debit card; and

(2) Does not make payment of wage by direct deposit or payroll debit card a condition of hire or of continued employment.

(c) Electronic. The written notice and written consent may be provided and obtained electronically so long as an employee is provided with the ability to view and print both the notice and the consent while the employee is at work and without cost to the employee, and the employee is notified of his or her right to print such materials by the employer through such electronic process.

(d) Language. The written notice and written consent shall be provided in English and in the primary language of the employee when a template notice and consent in such language is available from the commissioner.

§ 192-1.4 Prohibited practices

An employer and its agent shall not engage in unfair, deceptive or abusive practices in relation to the method or methods of payment of wages. No employer or his agent, or the officer or agent of any corporation, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her wages through direct deposit or payroll debit card.

Subpart-2 Methods of Payment

§ 192-2.1 Payment of Wages by Check

When paying wages by check, an employer shall ensure that:

(a) The check is a negotiable instrument;

(b) There is at least one means of no-cost local access to the full amount of wages through check cashing or deposit of check at a financial institution or other establishment reasonably accessible to the employee's place of employment; and

(c) The employer does not impose any fees in connection with the use of checks for the payment of wages, including a fee for replacement of a lost or stolen check.

§ 192-2.2 Payment of Wages by Direct Deposit

When paying wages by direct deposit, an employer shall ensure that:

(a) It has consent from the employee;

(b) A copy of the employee's consent must be maintained by the employer during the period of the employee's employment and for six years following the last payment of wages by direct deposit. A copy of the employee's written consent must be provided to the employee; and

(c) Such direct deposit is made to a financial institution selected by the employee.

§ 192-2.3 Payment of Wages by Payroll Debit Card

(a) When paying wages by payroll debit card, an employer shall ensure that:

(1) It has consent from the employee;

(2) It provides the following information and receives consent at least seven business days prior to taking action to issue the payment of wages by payroll debit card, during such seven business days the employee's consent shall not take effect.

(b) An employer shall not deliver payment of wages by payroll debit card unless each of the following is provided:

(1) Local Access to one or more automated teller machines that offers withdrawals at no cost to the employee;

(2) At least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee;

(c) An employer or agent shall not charge, directly or indirectly, an employee a fee for any of the items listed in this subsection. Inclusion in this subsection does not impose any separate or independent obligation to provide services, nor does it relieve an employer or agent from compliance with this Part or any Federal or State law or regulations:

(1) Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;

(2) Point of sale transactions;

(3) Overdraft, shortage, or low balance status;

(4) Account inactivity;

(5) Maintenance;

(6) Telephone or online customer service;

(7) Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee;

(8) Providing the employee with written statements, transaction histories or the issuer's policies;

(9) Replacing the payroll debit card at reasonable intervals;

(10) Closing an account or issuing payment of the remaining balance by check or other means; or

(11) Declined transactions at an Automated Teller Machine that does not provide free balance inquiries;

(12) Any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the terms and conditions of the payroll debit card provided to the employee.

(d) An employer or its agent shall not deliver payment of wages by payroll debit card account that is linked to any form of credit, including a loan against future pay or a cash advance on future pay. Nothing in this subsection shall prohibit an issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.

(e) An employer shall not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.

(f) An employer or its agent shall not deliver payment of wages by payroll debit card unless the agreement between the employer and issuer requires that the funds on a payroll debit card shall not expire. Notwithstanding this requirement, the agreement may provide that the account may be closed for inactivity provided that the issuer gives reasonable notice to the employee and that the remaining funds are refunded within seven days.

(g) At least thirty days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written notice in plain language, in the employee's primary language or in a language the employee understands, and in at least 12-point font of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before thirty days after the date the employer has provided the employee with written notice of the change in accordance with the provisions of this subsection, the employer must reimburse the employee for the amount of that fee.

(h) Where an employee is covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, an employer must also have the approval of the union before paying by payroll card.

Revised rule compared with proposed rule: Substantial revisions were made in sections 192-1.2(b), (d), (e), 192-1.3, 192-1.4, 192-2.3(a)-(c), (g) and (i).

Text of revised proposed rule and any required statements and analyses may be obtained from Michael Paglialonga, Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

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

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

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

The revisions do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The Department received numerous comments following publication of the original rule in the May 27, 2015 edition of the NY Register. Comments were received from employees, employee advocates, employers, business advocates, and financial institutions. The following represents a summary and an analysis of such comments, the reasons why any significant alternatives were not incorporated into the rule, and a description of the changes made in the proposed rule as a result of such comments.

Generally, comments were received arguing against any restrictions on the use of Payroll Debit Cards and comments were received which argued that Payroll Debit Cards should be prohibited in their entirety. The Department has received and considered these comments, which were informative on the benefits and limitations of Payroll Debit Cards. The Department has determined that while the payment of wages via Payroll Debit

Card can help ensure employees with access to wages in a free and effective way, restrictions and employee protections need to be implemented in order to ensure that employees can receive their wages, in full, in line with the requirements of Article 6 of the Labor Law.

Specific comments, and responses to them, are contained below.

Comment 1:

The requirement to provide a list of fee-free ATM locations near an employee's work location and home is unnecessarily burdensome and difficult due to employers' limited knowledge of their employee's place of residence.

Response 1:

The Department agrees and has amended the proposed rule to require that a list of fee-free ATM locations near an employee's work location or home.

Comment 2:

The provisions relating to required banking statements, transactional statements, and fraud/dispute resolution are unnecessary and inconsistent with the requirements of Treasury Regulation E.

Response 2:

Given the Federal regulatory scheme contained primarily in Regulation E, the Department has amended the proposed rule to eliminate the requirements for providing banking statements, transactional statements, and fraud/dispute resolution.

Comment 3:

The seven-day waiting period before seeking an employee's consent to Payroll Debit Cards is onerous and would cause significant hardship to employers.

Response 3:

The Department agrees and has amended the proposed rule to permit immediate consent with a subsequent seven day waiting period before an employer may act upon it.

Comment 4:

Immediate implementation of the rulemaking would be problematic as employers and financial institutions need time to change their systems and contracts.

Response 4:

The Department agrees and the rule will go into effect six months after adoption of the final rule.

Comment 5:

Comments asked if the services listed in Section 192-2.3(c) are required to be provided under this rule.

Response 5:

No, the Department has amended the proposed rule to provide clarity in this regard.

Comment 6:

It is not clear what the prohibition on fees for "other transactions" means in Section 192-2.3(c).

Response 6:

The Department agrees and has amended the proposed rule to remove this phrase.

Comment 7:

Electronic consent to a method of payment is not mentioned in the regulations. It would be preferable to have clarity on this issue.

Response 7:

The Department has amended the proposed rule to clarify that consent may be provided electronically by employees.

Comment 8:

The phrase "reasonable period of time" for an employer to act upon an employee's withdrawal of consent for a method of payment is ambiguous and should be clarified to not exceed two pay periods.

Response 8:

The Department agrees and has amended the proposed rule.

Comment 9:

There is confusion as to the meaning of the term "network," as that can be construed to mean an employer established network, a bank network, or an affiliated network of ATMs.

Response 9:

The Department agrees and has amended the proposed rule to eliminate references to a network of ATMs, and instead requires that local access be provided to one or more ATMs.

Comment 10:

Requiring employers to provide notice and consent in a language understood by employees is unduly burdensome. However, a significant percentage of the population needs information in languages other than English in order to ensure comprehension of the terms and requirements of a Payroll Debit Card program.

Response 10:

The Department agrees and has amended the proposed rule to permit employers to provide notice and consent either in the employee's primary language, in a language that the employee understands, or through a template prepared by the Department of Labor in accordance with the instructions contained therein. Templates containing relevant and required information will be prepared by the Department. The Department anticipates offering templates in, at least, the following languages: Spanish, Chinese, Haitian Creole, Korean, Polish and Russian. If an employer elects to use a template prepared by the Department and none exist that the employee understands, the employer may provide the employee with the Department's English template.

Comment 11:

Comments were received that argue that the rule should allow fees for declined transactions and balance inquiries at ATMs.

Response 11:

The Department has amended the proposed rule to permit fees for declined transactions at ATMs that provide free balance inquiries, since such fees can be reasonably avoided by employees.

Comment 12:

Requiring disclosures of terms for Payroll Debit Cards and not for other methods of payment promotes a bias against Payroll Debit Cards.

Response 12:

The Department has amended the proposed rule to make disclosure requirements applicable to Payroll Debit Cards and direct deposit, as both require employee consent. Such disclosures are necessary to ensure that employees are knowledgeable of their rights under the Labor Law and the proposed rule.

Comment 13:

The prohibition of fees in the rulemaking is overly burdensome and will make Payroll Debit Cards unprofitable. Certain fees should be permitted in order to ensure profitability of Payroll Debit Cards for financial institutions offering them as a product. Employers should not be required to ensure free banking services for their employees.

Response 13:

The proposed rule does not require that all services offered by a financial institution be provided to employees free of charge, nor does it contain a general prohibition on fees. The Department has amended the proposed rule to remove certain restrictions for fees, as described in Responses 6 and 11.

Comment 14:

Employees should be given the choice of the method (electronic vs. paper) to receive information.

Response 14:

The Department has amended the proposed rule to allow employees to be provided with information electronically if they are provided with the ability to print that information for free and during work hours.

Comment 15:

The proposed rule transfers banking law compliance onto employers.

Response 15:

The Department disagrees. The proposed rule is concerned with Labor Law requirements, not banking law requirements.

Comment 16:

Requiring 12-point font on information provided to employees will increase printing costs.

Response 16:

This requirement helps to ensure that employees are knowledgeable of their rights under the Labor Law and the proposed rule.

Comment 17:

The requirement that refunds be provided due to account inactivity may increase fraud.

Response 17:

This requirement helps to ensure that employees are able to access their wages from former employers without limitation or encumbrance, as required by the Labor Law. The proposed rule leaves unchanged the provisions for unclaimed funds, should the employee fail to respond to a reasonable notice.

Comment 18:

Comments were submitted arguing that the definitions of the terms "wages" and "employee" should be expanded and/or limited.

Response 18:

These terms are as defined in Article 6 of the Labor Law, where the regulatory authority for this rule is primarily derived.

Comment 19:

Employers should be required to notify employees of their right to withdraw consent at any time.

Response 19:

Employees are required to be provided with their options of receiving wages. The templates that will be prepared by the Department will contain a statement indicating that an employee has the right to withdraw consent at any time.

Comment 20:

Wages paid on Payroll Debit Cards should be free from the garnishment of wages.

Response 20:
The proposed rule deals only with the method of payment of wages.
Comment 21:
The proposed rule should not prohibit beneficial overdraft services that are popular with employees.
Response 21:
The rule does not prohibit overdraft services, only fees that are associated with such services.
Comment 22:
A statement of employee rights under the Labor Law and the proposed rule should be required under this rule generally, and in connection with the consent for a method of payment.
Response 22:
Such a requirement would be unduly burdensome and unnecessary. This rule deals with the methods of payment; other provisions of the Labor Law contain requirements for notice and posting of employee rights.
Comment 23:
The provisions governing paychecks need not be addressed by the proposed rules as such rules are already governed by opinion letters.
Response 23:
The proposed rule codifies existing requirements for paychecks, providing clarity to the regulated community on the existing requirements.
Comment 24:
Payroll Debit Cards inhibit employee access to paystub information.
Response 24:
The proposed rule leaves unchanged the requirements for wage statements contained in Section 195 of the Labor Law.
Comment 25:
The term "kickbacks" as used in the proposed rule is ambiguous.
Response 25:
This term is contained in several places within the Labor Law, most notably Section 198-b of the Labor Law, where such term has been defined and construed by the Courts.
Comment 26:
Safeguards need to be implemented restricting employer use of employee purchasing information.
Response 26:
The proposed rule deals only with the method of payment of wages, and not with the confidentiality of banking information.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Day and Residential Habilitation Changes

I.D. No. PDD-33-15-00005-A
Filing No. 899
Filing Date: 2015-10-13
Effective Date: 2015-11-01

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

Action taken: Amendment of Subparts 635-9, 635-10 and Part 671 of Title 14 NYCRR.

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

Subject: Day and Residential Habilitation Changes.

Purpose: To discontinue Individual Day Habilitation services and to add allowable services under Residential Habilitation.

Text of final rule: • Existing subparagraph 635-9.1(a)(1)(xxii) is amended as follows:

(xxii) Supervised community residences *(CRs)* and supervised individualized residential alternative*s* (IRA*s*) [facilities shall assume] *are responsible for* the cost of [services which]:

(a) *services that* are necessary to meet the needs of [consumers] *individuals* while in *the* residence; [and]

(b) *services that,* prior to August 1, 2004*,* could have been met by home health aide or personal care services separately billed to Medicaid[.]*; and*

(c) services specified in subparagraph 635-10.4(b)(1)(xvi) of this Part and paragraph 671.5(a)(7) of this Title that, prior to October 1, 2015, may have been separately billed to Medicaid.

• A new subparagraph 635-9.1(a)(1)(xxiii) is added as follows:

(xxiii) Supportive CRs and supportive IRAs are responsible for the cost of services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part and paragraph 671.5(a)(8) of this Title.

• Existing paragraph 635-9.1(a)(3) is amended as follows:

(3) Family care.

(i) The sponsoring agency (see glossary) [shall assume] *is responsible* for the cost of:

(a) Any item or service for which the sponsoring agency has been paid or will be reimbursed from local, State, or Federal funds. *This includes services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part.*

Note: Existing clauses (b) – (k) of this subparagraph and subparagraph (ii) of this paragraph are unchanged.

• Existing subparagraph 635-10.4(b)(1)(xv) is amended as follows:

(xv) Residential habilitation services in a supervised IRA [shall] include [services which]:

(a) *services that* are necessary to meet the needs of [consumers] *individuals* while in *the* residence; [and]

(b) *services that,* prior to August 1, 2004*,* could have been met by home health aide or personal care services separately billed to Medicaid[.]*;*

(c) services that, prior to October 1, 2015, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and

(d) services specified in subparagraph (xvi) of this paragraph that, prior to October 1, 2015, may have been separately billed to Medicaid.

• A new subparagraph 635-10.4(b)(1)(xvi) is added as follows:

(xvi) Effective October 1, 2015, residential habilitation services in a supervised IRA include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:

(a) nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;

(b) psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:

(1) behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and

(2) psychotherapy services; and

(c) nursing services that consist of:

(1) training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;

(2) development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;

(3) availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;

(4) coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and

(5) provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.

• A new subparagraph 635-10.4(b)(1)(xvii) is added as follows:

(xvii) Residential habilitation services for an individual who resides in a supportive IRA or Family Care Home include services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid; either

(a) at the residence at any time; or

(b) in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.

• Existing paragraph 635-10.5(c)(2) is amended as follows:

(2) Day habilitation services shall be reimbursed as either individual day habilitation, supplemental individual day habilitation, group day ha-

bilitation or supplemental group day habilitation. *Effective October 1, 2015, individual day habilitation services and supplemental individual day habilitation services are no longer available. Subdivisions (i) and (ii) of this paragraph are retained for such services that were delivered prior to October 1, 2015.*

Note: Existing subparagraphs (i) – (iv) of this paragraph are unchanged.

- Existing subparagraph 635-10.5(c)(4)(iv) is amended as follows:

(iv) For individual day habilitation and supplemental individual day habilitation services *provided prior to October 1, 2015,* total annual reimbursable costs derived through the application of the above methodology shall be trended in accordance with subdivision (i) of this section and divided by the total annual projected hours of utilization.

- Existing paragraph 635-10.5(c)(5) is amended as follows:

(5) The unit of service for individual day habilitation and supplemental individual day habilitation services *provided prior to October 1, 2015,* shall be one hour equaling 60 minutes and is reimbursed in 15-minute increments. When there is a break in the service delivery during a single day, for billing purposes, the provider may combine the duration of each non-continuous period of service provision (or ''session'') that is provided during the day, when at least one service/staff action delivered in accordance with the individual's day habilitation plan is documented for each session.

Note: Existing subparagraphs (i) – (v) of this paragraph are unchanged.

- Existing subparagraph 635-10.5(c)(6)(iii) is amended as follows:

(iii) Supplemental group day habilitation services may not be billed to Medicaid for*:*

(a) [consumers] *individuals* who live in residential settings with 24-hour staffing; for example, supervised individualized residential alternatives (IRAs) and supervised community residences (CRs)[.]*; and*

(b) effective October 1, 2015, individuals who live in supportive IRAs, supportive CRs, and Family Care Homes.

- Existing paragraph 671.5(a)(6) is amended as follows:

(6) The provider of community residential habilitation services in a supervised community residence [shall be] *is* responsible for the cost of [services which]:

(i) *services that* are necessary to meet the needs of [consumers] individuals while in residence; [and]

(ii) [which] *services that,* prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.]*;*

(iii) services that, prior to October 1, 2015, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and

(iv) services specified in paragraph 671.5(a)(7) of this Part that, prior to October 1, 2015, may have been separately billed to Medicaid.

- A new paragraph 671.5(a)(7) is added as follows:

(7) Effective October 1, 2015, residential habilitation services in a supervised CR include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:

(i) nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;

(ii) psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:

(a) behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and

(b) psychotherapy services; and

(iii) nursing services that consist of:

(a) training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;

(b) development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;

(c) availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;

(d) coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and

(e) provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.

- A new paragraph 671.5(a)(8) is added as follows:

(8) The provider of community residential habilitation services in a supportive CR is responsible for the cost of services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid; either

(a) at the residence at any time; or

(b) in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 635-9.1, 635-10.4, 635-10.5 and 671.5.

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

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

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

One non-substantive amendment made to text of the proposed regulations multiple times. The phrase "the effective date of these regulations" was changed to "October 1, 2015," which was the effective date of the emergency adoption of these regulations.

OPWDD filed these regulations as proposed regulations with a planned permanent adoption date of November 1, 2015; however, emergency adoption of the same regulations was necessary in order to achieve an October 1, 2015 effective date mandated by CMS.

The non-substantive amendment, changing "the effective date of these regulations" to "October 1, 2015," was made to the following provisions:

- 635-9.1(a)(1)(xxii)(c);
- 635-9.1(a)(1)(xxiii);
- 635-9.1(a)(3)(i)(a);
- 635-10.4(b)(1)(xv)(c) and (d);
- 635-10.4(b)(1)(xvi);
- 635-10.4(b)(1)(xvii);
- 635-10.5(c)(2), twice;635-10.5(c)(5)
- 635-10.5(c)(6)(iii)(b)
- 671.5(a)(6)(iii) and (iv)
- 671.5(a)(7); and
- 671.5(a)(8)

This amendment (made multiple times) does not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis, or Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Person-Centered Planning

I.D. No. PDD-33-15-00014-A

Filing No. 898

Filing Date: 2015-10-13

Effective Date: 2015-11-01

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

Action taken: Addition of Part 636; and amendment of Parts 633, 635, 671 and 686 of Title 14 NYCRR.

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

Subject: Person-Centered Planning.

Purpose: To implement Federal requirements for a person-centered planning process and a person-centered plan.

Text or summary was published in the August 19, 2015 issue of the Register, I.D. No. PDD-33-15-00014-P.

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

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

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

Assessment of Public Comment

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning person-centered planning.

Comment: A commenter sought an effective date of March 2019, consistent with the date upon which full compliance with the federal Home and Community Based Services (HCBS) settings regulations is required. Another commenter suggested an October 1, 2018 effective date to coincide with OPWDD's target date to initiate HCBS settings compliance reviews.

Response: The federal person-centered planning regulations in 42 441.301(c)(1)-(3) went into effect immediately upon promulgation of the rule in March 2014, without a transition period. OPWDD is adopting the regulations as proposed.

Comment: A commenter suggested that section 636-1.4 pertaining to documentation of rights modifications be revised to state that this section only applies to provider-owned or controlled residential settings.

Response: Any rights modifications for recipients of services, regardless of living situation, are governed by the regulations. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that a Medicaid Service Coordinator (MSC) may not be aware of rights restrictions imposed on others that may impact the rights of an individual on the MSC's caseload.

Response: The person-centered planning process should identify any rights modification impacting an individual. OPWDD is adopting the regulations as proposed.

Comment: Two commenters sought clarification regarding the rights modifications in section 636-1.4 and existing practices involving human rights committees.

Response: The requirements in section 636-1.4 do not supersede requirements in section 633.16 for human rights committee review of behavior support plans. Committee reviews will still be required where applicable. OPWDD is adopting the regulations as proposed.

Comment: Several commenters remarked that the requirements in section 636-1.4 of the proposed regulations increase the responsibilities of the service coordinator with regard to documentation in the individualized service plan (ISP).

Response: OPWDD considers that the proposed regulations implement many existing system practices into regulation. OPWDD is adopting the regulations as proposed.

Comment: A commenter suggested that the requirement that the service coordinator issue written notification of the right to a person-centered planning process and plan be incorporated into the Service Coordination Basic Agreement Form.

Response: OPWDD will consider the suggestion.

Comment: A commenter remarked that for individuals that have an ISP in place on the effective date of the regulations, November 1, 2015, the person-centered planning requirements take effect at the individual's next review, which could also be November 1, 2015. The commenter suggested delaying the effective date for this requirement to apply to reviews scheduled after December 1, 2015.

Response: Since providers were notified of the requirements three months in advance of their effective date, providers have had adequate time to prepare for compliance with this requirement. OPWDD is adopting the regulations as proposed.

Comment: Several commenters sought clarification regarding the following:

- "unpaid supports" as phrased in paragraph 636-1.3(b)(4);
- "clear conflict of interest guidelines for individuals" as phrased in paragraph 636-1.2(b)(5);
- clarification of the term ''self-direct'' as phrased in paragraph 636-1.3(b)(5);
- "reassessment of functional need" as phrased in paragraph 636.-1.3(f)(5);
- paragraph 636-1.3(b)(8) that requires documentation in the person-centered service plan of the risk factors and measures in place to minimize risk, including individual specific back-up plans and strategies when needed.

Response: OPWDD will issue guidance on the regulations that will provide the requested clarification.

Comment: Several commenters indicated that requiring the person-centered service plan to be signed by the provider(s) responsible for implementing the plan could cause significant logistical concerns.

Response: Obtaining all required signatures is necessary to assure that all providers implementing the person-centered service plan are aware of the plan. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that the proposed regulations conflict with existing practice since existing practice requires the person responsible for writing the habilitation plan to be present at the plan review meeting.

Response: Federal HCBS regulations require that only those persons chosen by the individual be present at the person-centered planning meeting. OPWDD is adopting the regulations as proposed.

Comment: Several commenters believed that the requirement concerning documentation that the residence was chosen by the individual and that the individual had alternative residential settings to consider is unrealistic.

Response: Documentation of choice in residential setting is a clear requirement of the federal regulations. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that the proposed regulations do not address federal HCBS settings requirements in 42 CFR 441.301(c)(4).

Response: 42 CFR 441.301(c)(4) is an HCBS setting requirement that will be addressed in future OPWDD regulations. The proposed regulations are only meant to implement federal HCBS requirements for a person-centered planning process and plan.

Comment: A commenter remarked that the proposed regulation uses the wording ''at least semi-annually'' in reference to review requirements for the person-centered service plan. The commenter recommends using existing language, ''twice annually."

Response: OPWDD notes that the language used in the regulation is consistent with language in existing regulation in subpart 635-99. OPWDD is adopting the regulations as proposed.

Comment: A commenter agreed with the requirement to document risk factors and measures to minimize risk, and suggested that additional guidance regarding the health and safety risks to the individual be provided.

Response: OPWDD will consider providing additional guidance. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that many individuals are unable to easily communicate their preferences and goals and that OPWDD should clarify that outcomes or results be in areas of the individual's life that he or she considers most important.

Response: OPWDD will consider providing additional guidance. OPWDD is adopting the regulations as proposed.

Comment: A commenter sought clarification concerning the rights of an individual as opposed to a person with decision-making authority conferred on him/her by state law to make decisions on behalf of the individual.

Response: OPWDD will provide guidance on the roles of decision-makers and the individuals in the person-centered planning process. OPWDD is adopting the regulations as proposed.

Comment: A commenter stated that a provision of the regulation conflates the requirement that the plan respond to individual preferences with the requirement that the plan ensure that unnecessary or inappropriate services are not provided. The provider suggested revisions to prevent confusion regarding how planners are to weigh individual preferences against the prohibition of unnecessary or inappropriate services.

Response: OPWDD will consider providing additional guidance. OPWDD is adopting the regulations as proposed.

Comment: A commenter remarked that the proposed regulations do not fully address the federal requirement in 42 441.301(c)(1)(iv) that providers of service must not provide case management to an individual except as allowed in the federal regulation.

Response: OPWDD has defined conflict of interest provisions within the recently approved HCBS comprehensive waiver and expects to address this in the future. OPWDD is adopting regulations as proposed.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Modification of the Deferral Recovery Provisions of Corning Natural Gas Corporation's Three-Year Gas Rates Plan

I.D. No. PSC-43-15-00005-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify in whole or part, a petition filed by Corning Natural Gas

Corporation to recover under—collections of Property Taxes and Large Customer Revenues through the Delivery Rate Adjustment.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Modification of the deferral recovery provisions of Corning Natural Gas Corporation's three-year gas rates plan.

Purpose: To consider the modification of the deferral recovery provisions of the three-year gas rates plan.

Substance of proposed rule: The Commission is considering whether to grant, deny or modify, in whole or part, a petition filed by Corning Natural Gas Corporation (Company) to recover under-collections of Property Taxes and Large Customer Revenues through the Delivery Rate Adjustment mechanism. Under the Gas Rates Joint Proposal, the Company is allowed to defer the difference between the actual and the target amounts until the conclusion of the three-year term. The amounts of the two deferrals at the end of the rate plan are substantial. The Company proposes to recover the $413,834 in contract customer revenue deferral from rate year three and $722,547 in property tax deferral, which includes the reconciliation from rate year three and the outstanding deferral from rate year two, beginning on January 1, 2016. The Commission may consider other related issues.

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

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

Public comment will be received until: 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.

(13-G-0465SP3)

Department of State

EMERGENCY RULE MAKING

Posting Requirements

I.D. No. DOS-35-15-00003-E

Filing No. 888

Filing Date: 2015-10-09

Effective Date: 2015-10-09

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

Action taken: Addition of section 160.10(e) to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

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

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect those inextricably entwined in the industry. Consistent with this legislative intent of Article 27, the Department is empowered to issue regulations which protect the general welfare of the public, including licensed nail specialists. Notwithstanding existing laws and regulations, a number of businesses have taken unfair advantage of a significant number of licensed nail specialists who contribute to the community and economy. The ease with which some establishments have been able to deprive workers of fair wages and other rights is due in part to the inadequacy of effective efforts to educate workers and consumers on such rights. On July 15, 2015, Governor Cuomo signed into law new legislation (S.5966) which, among other things, protects workers from abusive practices by imposing greater penalties against owners who fail to comply with the law.

To help ensure that consumers and workers, who are often vulnerable to abuses, are aware of certain workers' rights, the Department finds that it is necessary to continue to require public posting of a Bill of Rights for Nail Workers sign at every establishment that offers nail specialty services. The enhancement of public safety, health and general welfare necessitates the re-adoption of this regulation on an emergency basis. The Department finds that greater public and worker awareness of fair wages and other rights should reduce such unlawful activity and potential abuses by unscrupulous business owners. This rule was originally filed on an emergency basis on May 18, 2015 and first appeared in the State Register on June 3, 2015. On August 14, 2015, the Department filed an emergency re-adoption of this rule along with a notice of proposed rulemaking; that submission appeared in the State Register on September 2, 2015.

Subject: Posting requirements.

Purpose: To require posting of a Bill of Rights sign at all businesses where nail specialist services are offered.

Text of emergency rule: New Subdivision (e) is added to section 160.10 of Title 19 of the NYCRR.

Section 160.10. Posting requirements

(e) An owner who permits the practice of nail specialty to be conducted in an appearance enhancement business shall conspicuously post a nail practitioner bill of rights in a place where it will be readily visible by practitioners and the public. The Department of State shall furnish such sign to every place of business that permits the practice of nail specialty.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DOS-35-15-00003-EP, Issue of September 2, 2015. The emergency rule will expire December 7, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law ("GBL") §§ 402(5); 404 and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: "adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state." In addition, Sections 401(5) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry.

2. Legislative Objectives:

Article 27 of the GBL was enacted, inter alia, to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing measures to protect members of the public, including those who work in the industry. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

Notwithstanding existing laws and regulations, a number of businesses have taken unfair advantage of a significant number of licensed nail care specialists who contribute to the community and economy. The ease with which such businesses have been able to deprive their workers with fair wages and other rights, is attributed in part, to failing to educate the workers and the public. To help ensure that nail care specialists are better protected, the Department is requiring that business owners post a bill of rights sign in an area easily seen by consumers and nail care specialists. The Department finds that greater public awareness regarding such unlawful activity should reduce potential abuses by unscrupulous business owners.

4. Costs:

a. Costs to Regulated Parties:

The Department does not anticipate any additional costs to business owners. The Department will provide the required signs and posting of the same should not increase costs to businesses.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate additional costs to the state or local governments. The Department's current budget will cover the costs associated with providing the required signage to businesses.

5. Local Government Mandates:

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

6. Paperwork:
This rule requires owners to publically post signs that will be provided by the Department.
7. Duplication:
This rule does not duplicate, overlap or conflict with any other state or federal requirement.
8. Alternatives:
The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is needed to protect the general welfare of approximately 162,000 practitioners who offer nail specialty services.
9. Federal Standards:
There are no minimum standards established by the federal government for the same or similar subject areas.
10. Compliance Schedule:
As stated in the emergency rule, this rule will be effective immediately.

Regulatory Flexibility Analysis

1. Effect of rule:
This rule requires public posting of a practitioner's bill of rights sign in any business which offers nail care services. The Department finds that public posting of a bill of rights sign will help ensure that the nail care providers, who are often vulnerable to abuses, are aware of their rights, as well as the public they serve. The Department finds that greater public awareness regarding unfair wage practices will help reduce potential abuses by unscrupulous business owners. There are 26,753 appearance enhancement businesses and 7,764 area renters in New York State which may be subject to this rule.
2. Compliance requirements:
Owners subject to this rule will be required to post a sign provided by the Department in an area viewable by nail care specialists and the public.
3. Professional services:
The Department does not anticipate the need for professional services.
4. Compliance costs:
The Department does not anticipate that there will be any costs associated with complying with this rule.
5. Economic and technological feasibility:
This proposal is economically and technically feasible.
6. Minimizing adverse impact:
The Department did not identify any feasible alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, and several advocacy and business groups and finds this rule is necessary for the wellbeing of all practitioners who offer nail specialty services.
7. Small business and local government participation:
The Department, in conjunction with other state agencies, has consulted with small business interests which may be affected by this rule. In addition, the Department has conducted significant outreach to inform the public regarding this rule, including posting this rule on the Department's website and participating in a public forum detailing, inter alia, the purpose of this rule. Publication of the rule in the State Register will provide further notice of the proposed rulemaking to all interested parties. Additional comments will be received and entertained during the public comment period associated with this rulemaking.
8. Compliance:
As stated in the emergency rule, this rule is effective immediately.
9. Cure period:
The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that posting information regarding workers' rights is a matter of publicity which those subject to this rule can easily comply with. As the Department is providing the required signs to those impacted by this rule, the Department finds that a cure period is not appropriate.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:
The rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. There are 26,753 appearance enhancement businesses and 7,764 area renters across New York State that may be subject to this rule. Licensed owners throughout the state, including those in rural areas, are responsible for complying with this rule.
2. Reporting, recordkeeping and other compliance requirements; and professional services:
The rule requires owners who offer nail care services to post a sign regarding a practitioner's bill of rights. The rule does not impose other reporting or recordkeeping on owners. Further, there are no additional professional services required as a result of this regulation. No different or additional requirements are applicable exclusively to rural areas of the state.
3. Costs:
The Department does not anticipate that there will be any costs associated with complying with this rule.
4. Minimizing adverse impact:
The proposed rulemaking will improve the safety and wellbeing of nail care providers throughout the state, including rural areas. The Department has consulted with Department of Labor, Department of Health, and several advocacy groups, but did not identify any feasible alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.
5. Rural area participation:
No significant comments have been received regarding this rulemaking. Publication of the Notice in the State Register will provide notice to all interested parties, including those in rural areas. Additional comments received on this rulemaking will be considered and assessed during imminent Proposed Rule Making process on this matter.

Job Impact Statement

1. Nature of impact:
This rulemaking applies to all appearance enhancement owners who offer nail care services. Pursuant to this rule, owners are required to post a bill of rights in an area viewable by nail care specialists and the public. The Department finds that posting of such rights will help reduce wage abuse by unscrupulous business owners. Insomuch as this rule is intended to protect the wellbeing of those working in the nail care industry, the Department believes this rule will have a positive impact on jobs and employment opportunities. Specifically, by providing better protections to these types of workers, the Department finds that more people may seek employment in this field.
2. Categories and numbers affected:
There are approximately 30,000 owners who would potentially be subject to this rulemaking. Further, there are approximately 162,000 licensees who offer services specified by this rule and who would benefit from the information provided by this public posting.
3. Regions of adverse impact:
The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or lawful employment opportunities.
4. Minimizing adverse impact:
The Department considered not proposing the instant rulemaking. It was determined, however, this rule is immediately needed to protect the general welfare of nail care practitioners, who may not know their rights. The Department has consulted with Department of Labor, Department of Health, and several advocacy groups but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Mandatory Public Posting of Notices of Violations

I.D. No. DOS-35-15-00004-E
Filing No. 887
Filing Date: 2015-10-09
Effective Date: 2015-10-09

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

Action taken: Addition of section 160.39 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

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

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect the consumer. Adequate requirements for maintaining public health and safety standards and for ensuring financial responsibility with respect to businesses are important elements of such a system. Consistent with this legislative intent of Article 27, the Department is empowered to issue orders directing the cessation of unlicensed

activity by businesses and operators whose continued unlicensed operations pose a potential threat to the general welfare of the public. On July 15, 2015, Governor Cuomo signed into law new legislation (S.5966) which, among other things, increased the penalties for operating without an appropriate license. The new law now makes the operation of an unlicensed appearance enhancement business a misdemeanor, which indicates the danger the unlicensed operation of these businesses represents and further supports continuation of this emergency regulation.

To combat the dangers associated with the unlicensed operations of appearance enhancement businesses and to help ensure that the public is aware that such unlicensed businesses and/or unlicensed operators are not permitted to offer appearance enhancement services, which require close personal contact between providers and the consumer, the Department finds that it is necessary to continue to require public postings of Notices of Violations seeking orders directing the cessation of unlicensed activities. The enhancement of public safety, health and general welfare necessitates the re-adoption of this regulation on an emergency basis. The Department finds that greater public awareness regarding such unlawful activity should reduce the potential risk of injury posed by such unlicensed businesses and persons. This rule was originally filed on an emergency basis on May 18, 2015 and first appeared in the State Register on June 3, 2015. On August 14, 2015, the Department filed an emergency re-adoption of this rule along with a notice of proposed rulemaking; that submission appeared in the State Register on September 2, 2015.

Subject: Mandatory public posting of Notices of Violations.

Purpose: To inform the public that the Department of State has commenced an enforcement proceeding against an unlicensed business.

Text of emergency rule: Section 160.39 is added to Title 19 of the NYCRR to read as follows:

Section 160.39. Notification of Proceeding to Direct Cessation of Unlicensed Activity

(a) All businesses and operators served with a Notice of Violation relating to unlicensed activity pursuant to Article 27 of the New York General Business Law shall immediately affix a copy of such notice on the front window, door or exterior wall of the business. The Notice of Violation shall be within five feet of the front door or other opening to the business where customers enter from the street, at a vertical height no less than four feet and no more than six feet from the ground or floor. An establishment without a direct entrance from the street shall post such Notice of Violation at its immediate point of entry in a place where consumers are likely to see it.

(b) Such Notice of Violation shall not be removed except when authorized by the Department.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DOS-35-15-00004-EP, Issue of September 2, 2015. The emergency rule will expire December 7, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law ("GBL") §§ 402(5); 404 and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: "adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state." In addition, Sections 401(5) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry. Sections 401; 410(2) and 412 prohibit providing appearance enhancement services without an appropriate license.

2. Legislative Objectives:

Article 27 of the GBL was enacted; inter alia, to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing measures to protect members of the public, including those who work in the industry. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

This rule is needed to provide greater public awareness regarding unlawful and potentially dangerous activities. Mandating public posting of findings of unlicensed activities and Notices of Violations will benefit the public by providing notice that the services that they may be receiving are being performing in contravention of law.

4. Costs:

a. Costs to Regulated Parties:

The Department does not anticipate any costs to regulated parties. The Department will provide Notices of Violations to parties who are impacted by this regulation. The Department anticipates that some unlicensed businesses and operators will suffer some loss of business, however the intent of the regulation is to curb unlawful activity; accordingly, the Department finds any loss of business associated with unlawful activity to be appropriate.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to implement the rule. Existing staff will manage issuing Notices of Violations. Further, the Department has sufficient funds to produce Notice of Violation forms.

5. Local Government Mandates:

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

6. Paperwork:

This rule does not impose any new paperwork requirement. The Department will be issuing the Notices required pursuant to this rule. Affected entities are only required to post the same publically.

7. Duplication:

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

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is needed to protect the general welfare of the public who seek appearance enhancement services.

Requiring public posting will allow consumers to make informed decisions regarding the services that they may be receiving.

9. Federal Standards:

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

10. Compliance Schedule:

As stated in the emergency rule, this rule will be effective immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule requires public postings of Notices of Violations issued by the Department of State. The Department believes that the rule will provide greater public awareness of unlawful and potentially dangerous activities. Specifically, the rule will require persons and businesses who operate without a license and who have been served with a Notice of Violation to post the same. The rule applies to businesses that offer appearance enhancement services as well as to persons who engage in the following practices: nail specialty, waxing, natural hair styling, esthetics or cosmetology. Given that this rule applies to persons and businesses who are already operating unlawfully, the Department is not able to accurately estimate the number that will be affected by this rule.

2. Compliance requirements:

This rule requires that unlicensed persons and businesses subject to an administrative proceeding, commenced by the Department seeking an order directing the cessation of unlicensed activities, publically post a Notice of Violation in a manner which will inform the public of the same.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

The rule itself will not impose any cost on affected parties. The Department will provide appropriate notices for posting. The Department believes that once such notices are issued, previously unlicensed persons and businesses will seek an appropriate license. Pursuant to Article 27 of the General Business Law, the cost to obtain an appropriate license (depending on whether an examination is required) ranges from $45.00 to $60.00. Such costs do not include other fees, such as any education requirements or other business filings, which may be required.

5. Economic and technological feasibility:

The rule itself requires that unlicensed persons and business subject to a pending administrative hearing publically post notices of the same for the public benefit. Insomuch as the notices will be produced and provided by the Department, complying with this rule is both economically and technically feasible.

6. Minimizing adverse impact:

The Department did not identify any feasible alternatives which would achieve the results of the proposed rule and, at the same time, be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, and several advocacy groups and finds this rule necessary for the wellbeing of the public who seek appearance enhancement services.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests which may be affected by this rule. In addition, the Department has conducted significant outreach to inform the public regarding this rule, including posting this rule on the Department's

website and participating in a public forum detailing, inter alia, the purpose of this rule. Publication of the rule in the State Register will provide further notice of the proposed rulemaking to all interested parties. Additional comments will be received and entertained during the public comment period associated with this rulemaking.

8. Compliance:

As stated in the emergency rule, this rule is effective immediately.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that immediate posting of unlawful activity will help protect the public and as such a cure period is not appropriate.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to all unlicensed persons and business operating in the State of New York in rural and urban areas.

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

The rule requires unlicensed persons and businesses subject to a pending administrative proceeding seeking the cessation of unlicensed activity to post such notices so that they can be viewed by the public which may be seeking appearance enhancement services. No professional services are required to comply with this rule. No different or additional requirements are applicable exclusively to rural areas of the state.

3. Costs:

The rule itself will not impose any cost on affected parties. The Department will provide appropriate notices for posting. The Department believes that once such notices are issued, previously unlicensed persons and businesses will seek an appropriate license. Pursuant to Article 27 of the General Business Law the cost to obtain an appropriate license (depending on whether an examination is required) ranges from $45.00 to $60.00. Such costs do not include other fees such as any education requirements or other business filings which may be required.

4. Minimizing adverse impact:

The proposed rulemaking will improve the safety and wellbeing of the general public throughout the state, including rural areas that seek appearance enhancement services. The Department has consulted with Department of Labor, Department of Health, and several advocacy groups, but did not identify any feasible alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

5. Rural area participation:

No significant comments have been received regarding this rulemaking. Publication of the Notice in the State Register will provide notice to all interested parties, including those in rural areas. Additional comments received on this rulemaking will be considered and assessed during imminent Proposed Rule Making process on this matter.

Job Impact Statement

1. Nature of impact:

This rulemaking requires that unlicensed businesses and operators publicly post Notices of Violations seeking the cessation of unlicensed activity. Insomuch as the group affected by this rule is operating in violation of law, this rulemaking will not impact lawful business activities. The Department anticipates that some unlicensed businesses and operators will suffer some loss of business; however, the intent of the regulation is to curb unlawful activity. Accordingly, the Department finds any loss of business associated with unlawful activity to be appropriate.

2. Categories and numbers affected:

This rulemaking will affect all unlicensed persons and businesses operating in the state. Given the nature of the activities affected by this rule, the Department cannot estimate the number of unlawful operators and businesses in the state.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or lawful employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to protect the general welfare of the public that seeks appearance enhancement services. The Department consulted with Department of Labor, Department of Health, and several advocacy groups but did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Experience Requirements

I.D. No. DOS-43-15-00001-P

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

Proposed Action: Amendment of section 1102.4 of Title 19 NYCRR.

Statutory authority: Executive Law, art. 6-E, section 160-d

Subject: Experience requirements.

Purpose: Clarify maximum hours of experience through review appraisals.

Text of proposed rule: 19 NYCRR 1102.4 is amended as follows:

(a) An applicant shall have the burden of establishing to the satisfaction of the Department of State that the applicant actually performed the work associated with the appraisal or appraisals which the applicant claims appraisal-experience credit. Experience credit will only be granted for hours actually worked on an appraisal assignment provided that no applicant shall be permitted to claim experience hours in excess of the maximum hours per assignment as provided for by section 1102.3 of this Part.

(b) For review appraisals, an applicant shall receive 25 percent of the hours normally credited for an appraisal if the applicant performed a review appraisal, which shall include a field review, a documentary review, or a combination of both. However, experience gained by performing review appraisals may not exceed 25 percent of the total number of hours of experience required for licensing or certification.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law section 160-d (Art. 6-E) authorizes the New York State Board of Real Estate Appraisal (the "Board") to adopt regulations in aid or furtherance of the statute. One of the purposes of Executive Law Article 6-E is to ensure the qualification of licensed and certified real estate appraisers. To meet this purpose, the Department of State (the "Department"), in conjunction with the Board, has issued rules and regulations which are found at Chapter XXXI of Title 19 of the NYCRR and is proposing this rulemaking.

2. Legislative objectives:

Pursuant to Executive Law Article 6-E, the Department, in conjunction with the Board, licenses and regulates real estate appraisers. To provide protections against unqualified appraisers, the statute requires licensees and certificate holders to satisfy minimum experience requirements. The proposed rule advances this legislative objective by ensuring that appraiser applicants satisfy the minimum experience standards required for licensure or certification.

3. Needs and benefits:

This rule is needed to ensure that appraisers seeking certification satisfy minimum hours of experience by clarifying the total number of hours that may be received for review appraisals. The Department believes that readopting this rule will provide additional clarity to applicants regarding the minimum hours of experience for certification.

4. Costs:

a. Costs to regulated parties:

The Department does not anticipate that regulated parties will have any additional costs associated with this rulemaking.

b. Costs to the Department of State:

The Department does not anticipate any additional costs to implement the rule. Existing staff will handle the processing of applications for both individual applicants and occupational schools seeking course approvals.

5. Local government mandates:

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

6. Paperwork:

In applying for an appraisal license or certification, applicants are required to complete an application establishing that they have satisfied the minimum standards required by statute for the relevant license or certification. The proposed rule would retain this existing requirement.

7. Duplication:
This rule does not duplicate, overlap or conflict with any other state or federal requirement.
8. Alternatives:
The Department considered not proposing the instant rulemaking. It was determined, however, that the proposed regulatory amendments would benefit the regulated industry by providing greater clarity as to the requirements for certification.
9. Federal standards:
The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.
10. Compliance schedule:
The rule will be effective upon filing the Notice of Adoption.

Regulatory Flexibility Analysis

1. Effect of rule:
To provide protections against unqualified appraisers, Article 6-E of the Executive Law requires licensees and certificate holders to satisfy minimum experiential and other requirements. The proposed rule advances this legislative objective by clarifying the minimum standards required for licensure or certification. Specifically, the rule reinstates a prior rule and clarifies that appraisers seeking certification shall be entitled to a maximum of 25 percent of the credit hours for a review appraisal assignment. Further, review appraisals may not exceed 25 percent of the total number of hours of experience required for licensing or certification.
The rule does not apply to local governments.
2. Compliance requirements:
Insomuch as the proposed rulemaking applies only to individuals seeking licensure and/or certification, small businesses and local governments will not have additional reporting, recordkeeping or other affirmative obligations with the implementation of these regulations. The existing statutes and regulations already require minimum standards for licensure.
3. Professional services:
Small businesses and local governments will not need professional services to comply with this rule. Further, applicants seeking certification will not need to rely on any new professional services in order to comply with the rule. Applicants and licensees are already required to satisfy minimum qualifications.
4. Compliance costs:
The Department does not anticipate additional costs to appraiser applicants and/or licensees as a result of this rulemaking.
The rule does not impose any compliance costs on local governments.
5. Economic and technological feasibility:
Small businesses and local governments will not incur any significant costs as a result of the implementation of, or require technical expertise to comply with, these rules.
6. Minimizing adverse impact:
The Department did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance. The rule does not impose any additional reporting or record keeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required by the Executive Law.
7. Small business and local government participation:
No significant comments have been received regarding the proposed rulemaking. At an open meeting on August 7, 2015, the Department and the New York State Board of Real Estate Appraisal discussed re-adopting this requirement which was inadvertently removed following amendments to the NYCRR made last year. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to interested parties of the proposed rulemaking. Additional comments will be received and entertained during that comment period.
8. Compliance:
The rule will be effective upon filing a Notice of Adoption.
9. Cure period:
The Department is not providing for a cure period prior to enforcement of these regulations. Information regarding this rulemaking was discussed at a public meeting of the Department and the New York State Board of Real Estate Appraisal; accordingly the public has adequate notice of this rule. Further, notwithstanding that this rule was inadvertently removed following amendments to the NYCRR made last year, the Department has maintained a 25 percent requirement under its other powers pursuant to the Executive Law, and as such, a cure period is not necessary.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:
The rule will apply to all licensed and certified appraisers operating in the State of New York in rural and urban areas.
2. Reporting, recordkeeping and other compliance requirements; and professional services:
The Department does not anticipate any additional reporting, recordkeeping or other compliance requirements of this rule or that professional services are likely to be needed in rural areas to comply with the rule. Existing statutes and regulations already require minimum experience requirements for licensure, the rulemaking will not impose any new reporting, record-keeping or other compliance requirements on public or private entities in rural areas other than those acts that are already required pursuant to Executive Law, Article 6-E.
3. Costs:
The proposed rulemaking does not impose any costs on rural areas to comply with this rule.
4. Minimizing adverse impact:
The Department did not identify any alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome.
5. Rural area participation:
No significant comments have been received regarding the proposed rulemaking. At an open meeting on August 7, 2015, the Department and the New York State Board of Real Estate Appraisal discussed re-adopting this requirement which was inadvertently removed following amendments to the NYCRR made last year. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to interested parties in rural areas of the proposed rulemaking. Additional comments will be received and entertained during that comment period.

Job Impact Statement

1. Nature of impact:
The proposed rulemaking re-adopts a former rule which was inadvertently removed following amendments to the NYCRR made last year. The Department has, through its other powers pursuant to the New York Executive Law, maintained the requirements proposed by this rulemaking. Accordingly, the proposed rulemaking will not have an adverse impact on employment opportunities as those impacted by this rule are already complying with the same.
2. Categories and numbers affected:
The proposed rulemaking will not have any adverse impact on employment opportunities.
3. Regions of adverse impact:
The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.
4. Minimizing adverse impact:
The proposed rulemaking will not have any adverse impact on employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Appraisal Standards

I.D. No. DOS-43-15-00002-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: Appraisal Standards.

Purpose: To adopt the 2016-2017 edition of the Uniform Standards of Professional Appraisal Practice.

Text of proposed rule: Section 1106.1 of Title 19 of the NYCRR is amended as follows:

(a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2014-2015] *2016-2017* edition of the Uniform Standards of Professional Appraisal Practice:
(1) Definitions;
(2) Preamble;
(3) Ethics rule;
(4) Record keeping rule;
(5) Competency rule;
(6) Scope of work rule;
(7) Jurisdictional exception rule;
(8) Standard 1—Real Property Appraisal, Development;
(9) Standard 2—Real Property Appraisal, Reporting;
(10) Standard 3—Appraisal Review, Development and Reporting;
(11) Retired;

(12) Retired;
(13) Standard 6—Mass Appraisal, Development and Reporting;
(14) Standard 7—Personal Property Appraisal, Development;
(15) Standard 8—Personal Property Appraisal, Reporting;
(16) Standard 9—Business Appraisal, Development; and
(17) Standard 10—Business Appraisal, Reporting.

(b) The [2014-2015] *2016-2017* 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] *1155 15th Street, NW, Suite 1111,* Washington, DC 20005 tel: 202-347-7722 www.appraisalfoundation.org. The [2014-2015] *2016-2017* edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from http://www.appraisalfoundation.org. 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
One Commerce Plaza
99 Washington Avenue, 5th Floor
Albany, NY 12231
tel: 518-473-2728

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

Division of Licensing Services
N.Y.S. Department of State
123 William Street
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: David Mossberg, NYS Dept. of State, 123 William St., 20th FL., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

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

Public comment will be received until: 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, i.e., the adoption of these appraisal standards is mandated by § 160(d)(1)(d) of the Executive Law.

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 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 national standards for developing an appraisal and for reporting its results.

This proposal will adopt the 2016-2017 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 2016-2017 edition of the Uniform Standards of Professional Appraisal Practice. The State Board has previously adopted the 2002, 2003, 2004, 2005, 2006, 2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015 editions of the Uniform Standards of Professional Appraisal Practice without objection.

Job Impact Statement

Licensed and certified real estate appraisers are currently subject to the 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice, which will be revised by the 2016-2017 edition. The changes being made are minimal and are not anticipated to impact job opportunities for real estate appraisers. Accordingly, the New York State Board of Real Estate Appraisal does not believe that adoption of the 2016-2017 edition of the Uniform Standards of Professional Appraisal Practice will have any substantial adverse impact on jobs and employment opportunities.