

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

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

#### 2. Compliance Requirements:

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

#### 3. Professional Services:

None.

#### 4. Compliance Costs:

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

#### 5. Economic and Technological Feasibility:

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

#### 6. Minimizing Adverse Impact:

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

#### 7. Small Business and Local Government Participation:

This regulation does not impact local governments.

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

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, *In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al.*, 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

#### Rural Area Flexibility Analysis

Types and Estimated Numbers: There are entities regulated by the New York State Department of Financial Services (formerly the Banking

Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

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

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

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

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

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

#### Job Impact Statement

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

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

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

---



---

## New York State Gaming Commission

---



---

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

#### Licensing and Registration of Gaming Facility Employees and Vendors

**I.D. No.** SGC-09-18-00005-P

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

**Proposed Action:** Amendment of Parts 5303-5307 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2), 1322, 1323, 1324, 1325, 1326 and 1327

**Subject:** Licensing and registration of gaming facility employees and vendors.

**Purpose:** To govern the licensing and registration of gaming facility employees and vendors.

**Text of proposed rule:** Sections 5303.14, 5304.1, 5304.2, 5305.1, 5305.2, 5305.3, 5305.4, 5306.2, 5306.3, 5306.4, 5307.3 and 5307.5 of title 9 of NYCRR would be amended to read as follows:

§ 5303.14. Application and employment after denial or revocation.

(a) Any natural person whose license, registration or application was denied, suspended or revoked by the commission on the basis of any of the following provisions may reapply at any time after the failure or disqualification is cured:

(1) failure to demonstrate financial stability, after which reapplication is permitted only upon achieving financial stability;

(2) failure to satisfy the age requirement, after which reapplication is permitted only upon attaining the requisite age;

(3) if the commission has determined to deny a license or registration application or suspend or revoke a license or registration based upon a pending disposition of a criminal offense, reapplication is permitted upon disposition of the pending charge;

(4) if the commission has determined to deny a license or registration application or suspend or revoke a license or registration based upon the relation of the criminal history of the applicant and the employment position sought with the gaming facility, reapplication is permitted if a different employment position is sought to which the applicant's criminal history might not provide a basis for denial of the application; and

(5) any statutory or regulatory provision that is subsequently repealed or modified, after which reapplication is permitted only upon a showing that the subsequent repeal or modification of the statutory or regulatory provision obviates the grounds for denial or revocation and justifies the conclusion that the prior determination should not be a basis for denying a license or registration application;

\* \* \*

#### PART 5304

##### Casino Key Employee Licensing

\* \* \*

§ 5304.1. Standards for issuance of a casino key employee license.

(a) The specific criteria and standards for casino key employee licensing are set forth in Racing, Pari-mutuel Wagering and Breeding Law sections 1301(8) and 1323(1) through (6).

(b) All applicants for a casino key employee license have to prove, by clear and convincing evidence, his or her financial stability, integrity and responsibility as well as the applicant's good character, honesty and integrity.

(b)(c) Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1318(1)(c), a casino key employee is disqualified on the basis of any prior felony conviction.

§ 5304.2. Casino key employee license application and disclosure forms.

(a) An applicant for a casino key employee license shall file a multi-jurisdictional personal history disclosure form and other disclosure forms as required by the commission.

(b) Pursuant to the license application form, each applicant for a casino key employee license is required to provide a complete and accurate criminal history, including disclosing all prior arrests and convictions of the applicant.

(c) Subsequent to receiving a completed casino key employee license application, the commission shall provide the applicant with a copy of his or her criminal history information, if any, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1323(4).

(d) Each applicant for a casino key employee license is required to fill out the license form completely and accurately. Incomplete or misleading information supplied on the license form may result in denial of the application.

#### PART 5305

##### Gaming Employee Registration

###### Section

[5305.1 Persons required to register as a gaming employee]

[5305.2] 5305.1 Standards for issuance of a gaming employee registration

[5305.3] 5305.2 Gaming employee registration forms

[5305.4] 5305.3 Duration of registration

[§ 5305.1. Persons required to register as a gaming employee.]

[A person, as defined in Racing, Pari-Mutuel Wagering and Breeding Law section 1301(22), is required to obtain a gaming employee registration prior to being involved in any gaming licensed activities.]

[§ 5305.2] § 5305.1. Standards for issuance of a gaming employee registration.

(a) [Each applicant for a gaming employee registration shall produce such information, documentation and assurances as requested by the commission concerning the qualification criteria set forth in sections 5303.1 through 5303.6 of this Subchapter.] *The specific criteria and standards for gaming employee registration are set forth in Racing, Pari-Mutuel Wagering and Breeding Law sections 1301(22) and 1324(1) through (5).*

(b) *Each applicant for a gaming employee registration is required to prove, by clear and convincing evidence, that the applicant is qualified to hold a gaming employee registration.*

(b) The] (c) *Subsequent to receiving a completed gaming employee registrant application, the commission shall provide [an] the applicant [for a gaming employee registration] with a copy of his or her criminal history information, if any, as required by Racing, Pari-Mutuel Wagering and Breeding Law section 1324(5).*

(c) *Subsequent to the registration of a gaming employee, the executive director of the commission may revoke, suspend, limit or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of criteria set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1318. Notwithstanding, a gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction provided that the registrant has affirmatively demonstrated registrant's rehabilitation, pursuant to article 23-A of the Correction Law.]*

(d) *Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1324(3), a gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction or the commission of any act or acts that would constitute any offense described in Racing, Pari-Mutuel Wagering and Breeding Law section 1318 if the applicant has, in the judgment of the commission, affirmatively demonstrated the applicant's rehabilitation pursuant to article 23-A of the Correction Law.*

[§ 5305.3.] § 5305.2. Gaming Employee Registration form.

(a) A gaming employee registrant shall file a gaming employee registration form the commission supplies and may amend from time to time.

(b) Pursuant to the registration form, each gaming employee registrant is required to provide a complete and accurate criminal history, including disclosing any prior arrests and convictions of the applicant.

(c) Each gaming employee registrant is required to fill out the registration form completely and accurately. Incomplete or misleading information supplied on the registration form may result in the denial of the application.

[§ 5305.4.] § 5305.3. Duration of registration.

(a) Gaming employee registrations shall remain valid as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1325(6).

(b) Each gaming employee registration shall indicate an expiration date.

\* \* \*

#### PART 5306

##### Non-Gaming Employee Registration

\* \* \*

§ 5306.2. Standards for issuance of a non-gaming employee registration.

(a) Each applicant for a non-gaming employee registration shall produce such information, documentation and assurances as requested by the commission concerning the qualification criteria set forth in sections 5303.1 through 5303.6 of this Subchapter.

(b) Subsequent to the registration of a non-gaming employee[, the executive director of] the commission may revoke, suspend, limit or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in Racing, Pari-Mutuel Wagering and Breeding Law section 1318. [Notwithstanding, a non-gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction provided that the registrant has affirmatively demonstrated registrant's rehabilitation, pursuant to article 23-A of the Correction Law.]

(c) Notwithstanding subdivision (b) of this section, a non-gaming employee registration shall not be denied or revoked on the basis of a misdemeanor conviction [provided that the registrant has] or the commission of any act or acts that would constitute any offense described in Racing, Pari-Mutuel Wagering and Breeding Law section 1318 if the applicant has, in the judgment of the commission, affirmatively demonstrated [registrant's] the applicant's rehabilitation[,] pursuant to article 23-A of the Correction Law.

§ 5306.3. Non-gaming employee registration forms.

(a) A non-gaming employee registration applicant shall be required to file a non-gaming employee registration form that the commission supplies and may amend from time to time.

(b) Pursuant to the registration form, each non-gaming employee registrant is required to provide a complete and accurate criminal history, including disclosing any prior arrests and convictions of the applicant.

(c) Each non-gaming employee registrant is required to fill out the registration form completely and accurately. Incomplete or misleading information supplied on the registration form may result in the denial of the application.

§ 5306.4. Duration of registration.

(a) Non-gaming registrations shall remain valid [as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1325(6)] *for five years unless suspended or revoked. If a non-gaming registrant has not been employed in any position within a gaming facility for a period of three years, the registration of that non-gaming registrant shall lapse.*

PART 5307

Vendor Licensing and Registration

\*\*\*

§ 5307.3. Registration of other vendors.

\*\*\*

(b) Notwithstanding the requirements set forth in this Part, entities engaged in the following fields of commerce that provide goods or services to a gaming facility applicant or licensee, shall not be required to be licensed or registered as a vendor:

- (1) insurance companies and insurance agencies;
- (2) television, radio newspaper, internet or other similar media outlets used for advertising purposes;
- (3) governmental entities performing traditional governmental functions;
- (4) *providers of professional [legal, accounting and financial services] services including accountants, attorneys, engineers and architects, when acting in their respective professional capacities;*
- (5) physicians;
- (6) utility companies;
- (7) telecommunication companies;
- (8) training seminars, publication subscriptions, conference registration or membership dues for professional associations intended to directly contribute to the work performance or professional development of an employee;
- (9) non-profit charitable corporations or organizations, provided that no consideration is received for the contribution;
- (10) professional *sports teams, sports figures, entertainers and/or celebrity appearances;*
- (11) *shipping services;*
- (12) *state and Federally chartered banks or savings and loan associations where funds are deposited by gaming facility licensees, notwithstanding those sources or transactions provided to a gaming facility licensee that require commission approval;*
- (13) *any person not otherwise exempt under this subsection who or that is licensed by a Federal or state agency if the commission determines that such agency's licensing requirements are substantially similar to those of the commission;*

[(11)] (14) any other person who, by submission of a written petition, demonstrates to the commission that registration as a non-gaming vendor is not necessary to protect the public interest. *For the purposes of this paragraph, the gaming facility may submit a written petition on behalf of the person seeking exemption.*

(c) *The commission may request information or assurances from any person listed in subdivision (b) of this section to determine the validity of such person's exempt status.*

§ 5307.5. Vendor application and disclosure forms.

\*\*\*

(d) *No owner, manager, supervisory personnel or employee of a casino vendor enterprise licensee or ancillary casino vendor enterprise licensee that provides services to the gaming facility is permitted to wager at any gaming facility to which such licensee provides services.*

[(d) Employees] (e) *Any employee of a vendor registrant [are] who will perform services at a gaming facility is required to [fill out] complete a non-gaming employee application form and comply with the standards of a non-gaming employee as set forth in Part 5306 of this Subchapter.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Kristen Buckley, New York State Gaming Commission, One Broadway Center, Schenectady, NY 12305, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

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

**Regulatory Impact Statement**

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1307(1) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things: the methods and forms of application and registration that any applicant or registrant shall follow and complete; the methods, procedures, and form for delivery of information concerning any person's family, habits, character, associates, criminal record, business activities and financial affairs; the procedures for the fingerprinting of an employee of a licensee, or registrant; the manner and method of collection of payments of fees; and the grounds and procedures for the revocation or suspension of licenses and registrations.

Racing Law section 1322 requires the Commission to regulate the form by which applicants, licensees and registrants provide information pertaining to their qualifications for licensure or registration.

Racing Law section 1323 requires the Commission to regulate the procedures for photographing and fingerprinting applicants, licensees and registrants for identification and investigation purposes.

Racing Law section 1324 requires the Commission to regulate the method and form of registration that a gaming employee shall follow and complete, and the form for delivery of information pertaining to a gaming employee's qualifications for registration.

Racing Law section 1325 requires the Commission to establish by regulation appropriate fees to be paid upon the filing of the required applications.

Racing Law section 1326 requires the Commission to establish by regulation the time period during which a casino vendor may conduct business transactions with a gaming facility applicant or licensee prior to the casino vendor receiving a license. Racing Law section 1326 also requires the Commission to regulate the method and form of vendor registration.

Racing Law section 1327 requires the Commission to establish by regulation appropriate fees to be imposed on vendor registrants.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state and to prevent organized crime from any involvement in the casino industry" as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed amendments implement the above listed statutory directives regarding the establishment of licensing and registration requirements for gaming facility employees and vendors. The proposed amendments provide specificity with respect to updating information contained in their applications, specifying the process of reapplication after a denial or revocation of a license or registration, clarifying the categories of vendor licensing and designating groups of vendors who are not required to be licensed.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: There are no new or additional costs associated with the proposed amendments. The amendments seek to clarify the existing licensing and registration process and, in certain circumstances, exempt specific vendors from the licensing or registration process, reducing overall costs to the gaming facilities and the vendors.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of these rules: There are no new or additional costs associated with the proposed amendments. The amendments seek to clarify the existing process and, in certain cases, exempt specific vendors from the licensing or registration process, reducing overall costs to the division of the state police and the Commission. The proposed amendments will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: These proposed amendments are clarifying the process of licensing and registration of gaming facility employees and vendors. They impose no additional costs; no methods were used to determine the costs to the regulated parties or the Commission and the state.

5. LOCAL GOVERNMENT: These proposed amendments do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing and registration of gaming facility employees and vendors is strictly a matter of State law.

6. PAPERWORK: These proposed amendments are not expected to impose any significant paperwork requirements for gaming facility employees and vendor applicants other than the paperwork already required by the existing rules.

7. DUPLICATION: The proposed amendments do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulations. Alternatives were discussed and considered with stakeholders and compared to other jurisdiction regulations. These included the type of information required to be updated from an employee or vendor application;

the appropriate vendors to be exempt from the licensing or registration process; and the types of vendors to be properly classified as ancillary vendor enterprises.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing or registration of gaming employees and vendors in New York. It is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with these proposed amendments upon adoption.

#### Regulatory Flexibility Analysis

1. EFFECT OF RULE: These proposed amendments impact the licensure and registration of gaming facility employees and vendors. Small business vendors seeking to be licensed or registered will be impacted by these amendments. Local government will not be affected by these rules.

2. COMPLIANCE REQUIREMENTS: These proposed amendments require participating small business vendors to update their application with the Commission under specific circumstances.

3. PROFESSIONAL SERVICES: No new or additional professional services are required in order to comply with these proposed amendments.

4. COMPLIANCE COSTS: These amendments impose no new or additional compliance costs upon the small business vendors.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: These proposed amendments will not impose any technological costs on small businesses or local government.

6. MINIMIZING ADVERSE IMPACT: These proposed amendments do not impose adverse impacts on small businesses or local government.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION: These proposed amendments are in response to comments received from industry stakeholders and affected parties. Small businesses and local governments will have an additional opportunity to submit comments regarding these amendments during the comment period of the rule making process.

8. FOR RULES THAT EITHER ESTABLISH OR MODIFY A VIOLATION OR PENALTIES ASSOCIATED WITH A VIOLATION: The Commission has an administrative hearing process in place, which provides for notice and an opportunity to be heard, for those licensed vendors that violate the rules associated with horse racing, lottery, video lottery and charitable gaming. The Commission anticipates a similar process applying to those licensed vendors that violate Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law and the related rules.

#### Rural Area Flexibility Analysis

Several of the development zone regions authorized to host a licensed gaming facility, as contemplated by Racing, Pari-Mutuel Wagering and Breeding Law section 1310, are located within "rural areas" as that term is defined in Executive Law section 481(7). The decision to locate a licensed gaming facility in a rural area will not have an adverse economic impact. In addition, these proposed amendments will not have an adverse or disproportionate economic impact upon rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

#### Job Impact Statement

1. NATURE OF IMPACT: The Commission has determined that the proposed amendments to these rules will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, these rules are intended to create thousands of well-paying jobs. In addition, the amendments are intended to clarify the process for potential employees and vendors to obtain a license or registration from the Commission.

2. CATEGORIES AND NUMBERS AFFECTED: It is anticipated that up to 4 gaming facilities, as contemplated by Racing, Pari-Mutuel Wagering and Breeding Law Article 13, would employ more than 4,000 people. In addition, the construction of the gaming facilities will generate many new jobs.

3. REGIONS OF ADVERSE IMPACT: The Commission does not anticipate regions of the state to suffer a disproportionate adverse impact in regards to jobs or employment opportunities.

4. MINIMIZING ADVERSE IMPACT: These amendments do not create any unnecessary adverse impact on existing jobs. A positive impact on jobs and employment is anticipated.

## Department of Health

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

#### Managed Care Organizations

I.D. No. HLT-09-18-00006-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 98-1.11(e) of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 4403(2)

**Subject:** Managed Care Organizations.

**Purpose:** To maintain the contingent reserve requirement applied to the Medicaid Managed Care, HIV SNP and HARP programs.

**Text of proposed rule:** Subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 is amended to read as follows:

(ii) Notwithstanding the provisions of subparagraph (i) above, the contingent reserve applicable to net premium income generated from the Medicaid managed care[, Family Health Plus.] and HIV SNP[, and HARPs] programs shall be:

(a) 7.25 percent of net premium income for 2011;

(b) 7.25 percent of net premium income for 2012;

(c) 7.25 percent of net premium income for 2013;

(d) 7.25 percent of net premium income for 2014;

(e) 7.25 percent of net premium income for 2015;

(f) [8.25] 7.25 percent of net premium income for 2016;

(g) [9.25] 7.25 percent of net premium income for 2017;

(h) [10.25] 7.25 percent of net premium income for 2018;

(i) [11.25] 8.25 percent of net premium income for 2019;

(j) [12.5] 9.25 percent of net premium income for 2020;

(k) [12.5] 10.25 percent of net premium income for 2021;

[calendar years after 2020.]

(l) 11.25 percent of net premium income for 2022;

(m) 12.5 percent of net premium income for 2023;

(n) 12.5 percent of net premium income for calendar years after

2023.

The provisions of this subparagraph shall not apply to HMOs and PHSPs beginning operations in 2011<sup>6</sup> or after.

New Subparagraph (iii) of paragraph (1) of subdivision (e) of section 98-1.11 is added to read as follows:

(iii) *The contingent reserve applicable to net premium income generated from the Health and Recovery Plans (HARPs) shall be the same percentages listed in subparagraph (ii), except that for years 2015, 2016 and 2017 the applicable contingent reserve shall be 5.0 percent of net premium income.*

[(iii)](iv) Upon an HMO, PHSP or HIV SNP reaching its maximum contingent reserve of 12.5 percent of its net premium income for a calendar year, it must continue to maintain its contingent reserve at this level thereafter. Such contingent reserve requirement shall be deemed to have been met if the net worth of the HMO, PHSP or HIV SNP, based upon admitted assets, equals or exceeds the applicable contingent reserve requirement for such calendar year.

**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:** April 30, 2018.

**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:

Public Health Law section 4403(2) states the Commissioner may adopt and amend rules and regulations pursuant to the state administrative procedures act to effectuate the purposes and provisions of Article 44, which governs the certification and operational requirements of Managed Care Organizations (MCOs).

Legislative Objectives:

10 NYCRR 98 was extensively amended in 2005 to further implement the provisions of Article 44 of the Public Health Law. The proposed amendment to § 98-1.11(e) continues the Medicaid Redesign Team Proposal #6 (2% reduction in Medicaid premium rates) by temporarily reduc-