

5. LOCAL GOVERNMENT MANDATES: The proposed rulemaking does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. PAPERWORK: Licensed lottery courier services would need to submit their advertisements for approval, keep a record of advertisements and keep records of those customers who might request to not receive courier service advertisements.

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

8. ALTERNATIVES: The alternative of not proposing amendments to regulations governing advertising by lottery couriers was considered and rejected. This proposed rulemaking would prevent false, deceptive or misleading advertising.

9. FEDERAL STANDARDS: The proposed rule does not exceed any minimum standards imposed by the federal government.

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

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

The proposed rulemaking will not have any adverse impact on small businesses, local governments, jobs or rural areas. The proposed rulemaking would govern advertising by lottery courier services to prevent false, deceptive or misleading advertising, such as stating or implying that a customer may “play” the lottery through the courier service’s platform or purchase a lottery ticket directly from the courier service.

The proposed rulemaking does not impact local governments and will not have an adverse impact on small businesses.

The proposed rulemaking imposes no adverse impact on rural areas. The rule applies uniformly throughout the state.

The proposed rulemaking will have no adverse impact on job opportunities.

The proposed rulemaking will not adversely impact small businesses, local governments, jobs or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required and have not been prepared.

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

Purchase Location Requirements for Lottery Courier Services

I.D. No. SGC-50-22-00009-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 5014.7 of Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1605, 1607, 1609; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Purchase location requirements for lottery courier services.

Purpose: To facilitate the proper sale of lottery tickets to generate revenue for education.

Text of proposed rule: Subdivision (a) of section 5014.7 of 9 NYCRR would be amended to read as follows:

§ 5014.7. Requirements for network.

(a) Location of courier customers within the State. A network shall employ a method of restricting requests for courier services to only those made by courier customers physically located in the State of New York at the time of purchase of courier services. *A purchase of courier services within the meaning of this subdivision occurs when the customer requests delivery of a particular lottery ticket or tickets from the courier service and when the customer initiates the transfer of funds to the courier service in connection with such ticket or tickets, both of which must occur while the courier customer is physically located in the State of New York. A courier service may not accept a delivery request from a customer physically located outside of the State at the time of the request. A courier service may not accept the transfer of funds from, by or on behalf of a courier customer who is physically located outside of the State at the time such customer initiates the transfer.*

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, NY 12301, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: The New York State Gaming Commission (“Commission”) is authorized to promulgate this rule by Tax Law Sections 1601, 1604, 1605, 1607 and 1609, and Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) Sections 103(2) and 104(1) and (19).

Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1605 authorizes the licensing of lottery sales agents and lottery vendors and sets forth criteria for licensing, while Tax Law Section 1607 establishes that a lottery license may be suspended or revoked. Tax Law Section 1609 provides that no ticket shall be sold by any person other than a licensed lottery sales agent.

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

2. LEGISLATIVE OBJECTIVES: To clarify the lottery courier-service-purchase-location requirements.

3. NEEDS AND BENEFITS: The proposed rulemaking will clarify the requirements for customer presence in New York State. A licensed lottery courier service is permitted to accept orders to purchase New York lottery tickets on behalf of a courier customer. The courier service then fulfills a request by purchasing the ticket at a licensed lottery sales agent retail location on behalf of the courier customer. Federal law prevents the sale of lottery tickets across state borders. Existing regulations require a courier service to geolocate its customer as being physically in New York at the time of the purchase of courier services. The proposed amendment would clarify the courier-service-purchase-location requirement by providing that the purchase of courier services occurs when the customer requests the delivery of a ticket or tickets and when the customer initiates the transfer of funds to the courier service in connection with the purchase. Thus, a customer would not be permitted to place an order for multiple tickets while in the State without funding the purchase, then fund all or a portion of the purchase remotely while out of the State.

4. COSTS:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to the regulated parties or stakeholders.

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

5. LOCAL GOVERNMENT MANDATES: The proposed rulemaking does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. PAPERWORK: There are no changes in paperwork requirements. Licensed lottery courier services will continue to use the existing system and procedures.

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

8. ALTERNATIVES: The alternative of not proposing amendments to the regulations governing lottery courier-service-purchase-location requirements was considered and rejected. This proposed rulemaking would help clarify the requirements for a customer to be present in New York State when the customer requests the delivery of a ticket or tickets and when the customer initiates the transfer of funds to the courier service in connection with the purchase.

9. FEDERAL STANDARDS: The proposed rule does not exceed any minimum standards imposed by the federal government.

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

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

The proposed rulemaking will not have any adverse impact on small businesses, local governments, jobs or rural areas. The proposed rulemaking would amend regulations governing the purchase of lottery courier services. The amendment would clarify the requirements for customer presence in New York State.

The proposed rulemaking does not impact local governments and will not have an adverse impact on small businesses.

The proposed rulemaking imposes no adverse impact on rural areas. The rule applies uniformly throughout the state.

The proposed rulemaking will have no adverse impact on job opportunities.

The proposed rulemaking will not adversely impact small businesses, local governments, jobs or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required and have not been prepared.

Department of Health

NOTICE OF ADOPTION

Surge and Flex Health Coordination System

I.D. No. HLT-07-22-00011-A

Filing No. 961

Filing Date: 2022-11-23

Effective Date: 2022-12-14

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

Action taken: Addition of sections 1.2, 700.5, Part 360; amendment of sections 400.1, 405.24 and 1001.6 of Title 10 NYCRR; amendment of sections 487.3, 488.3 and 490.3 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 225, 576, 2800, 2803, 4662; Social Services Law, section 461

Subject: Surge and Flex Health Coordination System.

Purpose: Provides authority to the Commissioner to direct certain actions and waive certain regulations in an emergency.

Substance of final rule: Although the Governor retains authority to issue Executive Orders to temporarily suspend or modify regulations pursuant to the Executive Law, these proposed regulatory amendments would provide an expedient and coherent plan to implement quickly the relevant temporary suspensions or modifications. The proposed regulatory amendments would permit the State Commissioner of Health or designee to take specific actions, as well as to temporarily suspend or modify certain regulatory provisions (or parts thereof) in Titles 10 and 18 of the NYCRR during a state disaster emergency, where such provisions are not required by statute or federal law. These proposed amendments would also permit the Commissioner to take certain actions, where consistent with any Executive Order (EO) issued by the Governor during a declared state disaster emergency. Examples include issuing directives to authorize and require clinical laboratories or hospitals to take certain actions consistent with any such EOs, as well as the temporary suspension or modification of additional regulatory provisions when the Governor temporarily suspends or modifies a controlling state statute.

The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 60-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 360.1(a), (b) and 400.1(b).

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

Revised Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations with respect to facilities subject to Article 28 of the Public Health Law (PHL) is contained in PHL sections 2800 and 2803(2). PHL Article 28 (Hospitals), section 2800, specifies: "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institu-

tions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article." PHL section 2801 defines the term "hospital" as also including residential health care facilities (nursing homes) and diagnostic and treatment centers (D&TCs). PHL section 2803 (2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of such health care facilities.

PHL section 4662 authorizes the Commissioner to issue regulations governing assisted living residences. Social Services Law (SSL) section 461(1) authorizes the Commissioner to promulgate regulations establishing standards applicable to adult care facilities. PHL section 576 authorizes the Commissioner to regulate clinical laboratories.

PHL section 225 authorizes the Public Health and Health Planning Council (PHHPC) and the Commissioner to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York.

Upon the future declaration of any disaster emergency, any further authorization by the Governor pursuant to article 2-B of the Executive Law, if it should suspend any statutes which otherwise conflict with these regulations, will establish the immediate effectiveness of these provisions.

Legislative Objectives:

The objectives of PHL Article 28 include protecting the health of New York State residents by ensuring that they have access to safe, high-quality health services in medical facilities, while also protecting the health and safety of healthcare workers. Similarly, PHL Articles 36 and 40 ensure that the Department has the tools needed to achieve these goals in the home care and hospice spaces, and PHL section 4662 and SSL section 461 likewise ensure that the Department has appropriate regulatory authority with respect to assisted living residences and adult care facilities. PHL section 576 ensures that the Commissioner has appropriate regulatory authority over clinical laboratories. Finally, PHL section 225 ensures that the State Sanitary Code includes appropriate regulations in the areas of communicable disease control and environmental health, among others.

By permitting the Commissioner to temporarily suspend or modify regulatory provisions in each these areas, where not required by state statute or federal law, or where authorized by a gubernatorial Executive Order, these amendments provide crucial flexibility for this and future emergency response efforts.

Needs and Benefits:

During a state disaster emergency, Section 29-a of the Executive Law permits the Governor to, among other things, "temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster."

Although the Governor retains authority to issue Executive Orders to temporarily suspend or modify regulations pursuant to the Executive Law, these proposed regulatory amendments would provide an expedient and coherent plan to implement quickly the relevant temporary suspensions or modifications. The proposed regulatory amendments would permit the State Commissioner of Health or designee to take specific actions, as well as to temporarily suspend or modify certain regulatory provisions (or parts thereof) in Titles 10 and 18 of the NYCRR during a state disaster emergency, where such provisions are not required by statute or federal law. These proposed amendments would also permit the Commissioner to take certain actions, where consistent with any Executive Order (EO) issued by the Governor during a declared state disaster emergency. Examples include issuing directives to authorize and require clinical laboratories or hospitals to take certain actions consistent with any such EOs, as well as the temporary suspension or modification of additional regulatory provisions when the Governor temporarily suspends or modifies a controlling state statute.

The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 60-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

During a state disaster emergency with significant public health impact, and where compliance with certain regulations may prevent, hinder or delay action necessary to cope with the disaster, as is the case with COVID-19, this authority will ensure that the State has the most efficient regulatory tools to facilitate the State's and regulated parties' response efforts to Surge and Flex the healthcare system statewide. Additionally, this authority will also ensure that the Department has the flexibility to impose additional requirements, where necessary, to ensure effective response to a