

procedures for changing non-guaranteed elements should not be less favorable than the original insurer's procedures. The Department believes using a less favorable procedure would be unfair to policyholders and annuitants. Language was added, however, to allow an exception where necessary due to the financial condition of the original insurer, if approved by the Superintendent.

Two commenters recommended deleting the requirement that the insurer must review the anticipated experience factors for existing business whenever the non-guaranteed elements for new business are changed. The Department decided the requirement that the anticipated experience factors for existing business be reviewed at least every five years would be sufficient. Accordingly, the revision was made.

One commenter recommended deleting section 48.2(g), which permits certain simplifications and thresholds for making revisions to non-guaranteed elements within the board-approved criteria as unnecessary and giving the implication that anything other than what is in the regulation would not be permitted. No revision was made because the Department believes items such as thresholds for making changes should be approved by the board.

Two commenters recommended eliminating the rule requiring a limit on passing high unit costs on to policyholders due to low sales volume. The Department believes passing on the impact of low sales volume is unfair and inconsistent with the requirements in the law that the changes be based on expectations of future experience rather than the impact of past experience.

One commenter recommended that changes to cost of insurance rates in universal life insurance policies should be based solely on changes in anticipated mortality experience. The Department believes that the Insurance Law permits changes in any non-guaranteed element to be based on changes in any of the assumptions listed in the law. Accordingly, no change was made.

One commenter recommended that insurers should not be required to disclose current non-guaranteed elements to policyholders. The Department believes that it is important that policyholders and annuitants know the non-guaranteed elements that are expected to apply to their policies. This will allow them to track the actual credits and charges over time and compare them to what was originally expected.

Several commenters stated that the policy form requirements in the proposed regulation would be overly burdensome. The Department considered the comments and those requirements were removed.

One commenter recommended that the notice to policyholders of changes in non-guaranteed elements should only apply to adverse changes and should not apply to adverse changes in interest crediting rates. The Department made the revision so that the disclosure only applies to adverse changes with the exception of interest crediting rates. For interest crediting rates, adverse changes do not need to be disclosed in advance if the change is based solely on changes in expected investment income or hedging costs.

One commenter recommended that the regulation be revised to require Department approval of changes in non-guaranteed elements. Some commenters commented that the advance filing of changes in non-guaranteed elements is tantamount to rate regulation. Another commenter recommended that there be no advance filing with the Department of adverse changes. The Department believes prior approval is not necessary to ensure fair treatment of policyholders but advance notice of adverse changes is important because it helps avoid situations where improper changes in non-guaranteed elements results in fines and the need for the insurer to make restitution to harmed policyholders.

Some commenters requested that the Department not require the actuarial memorandum regarding pricing to be filed with the policy form filing, but instead be available upon request of the Department. The requested revision was made. Some commenters expressed concern about the need to ensure confidentiality due to the proprietary nature of the information that may be contained in the actuarial memorandum. In accordance with Public Officers Law Section 89, an insurer may request confidentiality of records at the time that it submits the records to the Department.

One commenter questioned the need for an actuarial memorandum for annuities. The Department believes a disciplined process for making changes to non-guaranteed elements for annuities is important to ensure fair treatment of contract holders. Some commenters commented that the information required for the actuarial memorandum is too detailed. The Department believes the level of detail required by the regulation is necessary and appropriate for the Superintendent to evaluate the information.

One commenter recommended deleting the requirement that the actuarial memorandum describe the investment strategy. The Department believes this is important information to have to ensure that policyholders are treated fairly.

Several commenters recommended shortening the time for notification to the Department of adverse changes in non-guaranteed elements from

120 days. Most of the concern seemed to center around changes in interest crediting rates. As indicated above, the advance notice requirement was removed for annuities and, for life insurance, only changes in interest crediting rate that are not related to expected investment income would need to be reported in advance. As for other adverse changes, the 120 day period was chosen so that any concerns the Department might have could be resolved prior to the time of advance notification to policyholders, which is 60 days.

One commenter expressed concern about the 15 day advance notice for changes in non-guaranteed elements on new policies. The Department has removed that requirement.

One commenter expressed concern about the requirement to provide the board criteria and other information within 30 days of adoption of the criteria. This requirement was removed. The Department will request the board criteria on an as-needed basis.

One commenter requested a delay in the effective date of the regulation from 120 days to one year after publication. Given the various changes made to the regulation in response to comments received, the Department believes a change to 180 days after publication should be sufficient.

Department of Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Physician and Pharmacies; Prescribing, Administering and Dispensing for the Treatment of Narcotic Addiction

I.D. No. HLT-21-17-00001-EP

Filing No. 301

Filing Date: 2017-05-03

Effective Date: 2017-05-03

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

Proposed Action: Amendment of section 80.84 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3308(2)

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

Specific reasons underlying the finding of necessity: Drug addiction and accidental overdoses due to opioid prescription medication and heroin are at an all-time high in New York State and across the nation. The Drug Addiction Treatment Act of 2000 (DATA 2000) and New York State regulations currently permit qualified physicians to prescribe or dispense buprenorphine for the treatment of individuals with substance use disorder (SUD). Buprenorphine has been shown to be an effective treatment option for opioid dependence, providing a safe, controlled level of medication to overcome the use of a problem opioid. Recently enacted federal law and regulations allow for the expanded access to buprenorphine. However, to implement this in New York State, the Department's regulations must be amended.

In September 2016, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) adopted a new rule that increased the number of patients that a practitioner can treat for opioid addiction in an office-based practice setting. Further, on July 22, 2016, the Comprehensive Addiction and Recovery Act of 2016 (CARA) was signed into law by President Obama, extending prescribing privileges to nurse practitioners and physician assistants to treat patients for opioid addiction with buprenorphine. Regulations in 10 NYCRR Part 80 are now outdated because they refer to a patient limit of thirty and restrict prescribing privileges to physicians.

According to the New York State Office of Alcohol and Substance Abuse Services (OASAS) data, more than 107,000 people were treated for opioid addiction in 2015, with approximately 1,540 physicians certified to prescribe buprenorphine. It is clear that increased access to treatment is necessary, based upon the ratio of certified physicians to patients suffering from SUD. Expanding the authority to treat patients with SUD to physician assistants (PAs) and nurse practitioners (NPs), will greatly improve access for thousands of individuals across the state.

To ensure that individuals addicted to opioids have immediate access to treatment from authorized providers, including PAs and NPs, the Commissioner of Health has determined it necessary to file these regulations

on an emergency basis. State Administrative Procedure Act § 202(6) empowers the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest. Removing the outdated legal obstacles in the current regulations would immediately allow experienced practitioners to treat addiction.

Subject: Physician and Pharmacies; Prescribing, Administering and Dispensing for the Treatment of Narcotic Addiction.

Purpose: To allow any authorized practitioner to prescribe, administer and dispense buprenorphine for the treatment of narcotic addiction.

Text of emergency/proposed rule: Section 80.84 is amended as follows:

Section 80.84 [Physicians] *Practitioners* and pharmacies; prescribing, administering and dispensing for the treatment of narcotic addiction.

Pursuant to the provisions of the federal Drug Addiction Treatment Act of 2000 (DATA 2000) (106 P.L. 310, Div. B, Title XXXV, Section 3502(a)), an authorized [physician] *practitioner* may prescribe, administer or dispense an approved controlled substance, and a licensed registered pharmacist may dispense an approved controlled substance, to a patient participating in an authorized controlled substance maintenance program approved pursuant to Article 32 of the Mental Hygiene Law for the treatment of narcotic addiction.

(a) An approved controlled substance shall mean the following controlled substance which has been approved by the Food and Drug Administration (FDA), or its successor agency, and the New York State Department of Health for the treatment of narcotic addiction:

(1) buprenorphine

(b) An authorized [physician] *practitioner* is a [physician] *practitioner* specifically registered with the Drug Enforcement Administration to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction, and approved for such purpose pursuant to the provisions of Article 32 of the Mental Hygiene Law.

(1) The total number of such patients of an authorized [physician] *practitioner* at any one time shall not exceed [30] *the limit established by DATA 2000 and the Department of Health and Human Services (HHS) Substance Abuse and Mental Health Services Administration (SAMHSA), or its successor agency.*

(2) An authorized [physician] *practitioner* prescribing an approved controlled substance for the treatment of narcotic addiction, in addition to preparing and signing an official New York State prescription or an *electronic prescription* in accordance with Section 3332 of the Public Health Law and Section 80.69 of this Part, shall also include his/her unique DEA identification number on the prescription.

(3) *An authorized practitioner may dispense an approved controlled substance for the treatment of narcotic addiction in accordance with Section 3331 of the Public Health Law and Section 80.71 of this Part.*

(c) A pharmacist may dispense an approved controlled substance for the treatment of narcotic addiction pursuant to a prescription issued by an authorized [physician] *practitioner*. Such dispensing shall be in accordance with Section 3333 of the Public Health Law and Section 80.74 of this Part.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 31, 2017.

Text of 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:

Section 3308(2) of the Public Health law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provision of Article 33 of the Public Health Law in order to effectuate their purpose and intent.

Legislative Objectives:

The legislative purpose of Article 33, and its associated regulations, is to combat illegal use of and trade in controlled substances and to allow legitimate use of controlled substances in health care authorized by the article or other law. This amendment will provide for increased access to treatment for persons addicted to opioids.

Needs and Benefits:

The rise of heroin and pharmaceutical opioid use has increased the need and demand for treatment throughout New York State. Deaths in New York have risen 50 percent in the last five years due to opioid overdose. Many of these deaths can be attributed to untreated opioid use disorder.

Statistics published in the “2015 New York State Opioid Poisoning, Overdose and Prevention Report to Governor Cuomo and the NYS Legislature” provide significant information of the widespread epidemic that has reached this state. According to the Report:

In 2009, there were 1,538 reported deaths from unintentional drug poisonings in NYS. Toxicology tests identified heroin in 242 (16 percent) of these deaths and opioid analgesics in 735 (48 percent). In 2013, the latest full year for which data are available, the number of reported drug overdose deaths increased to 2,175, a 41 percent increase from 2009. The number of heroin-related deaths increased in 2013 to 637, and opioid analgesics related deaths rose to 952, increases of 163 percent and 30 percent from 2009, respectively. Opioid-related emergency department visits increased 73 percent from 2010 to 2014, 75,110 opioid-related inpatient hospital admissions were reported in 2014, an increase of 3 percent from 2010, and 118,875 (42 percent) of the 281,800 admissions to NYS certified substance abuse treatment programs in 2014 included “any opioid” as the primary, secondary or tertiary drug problem, up 19 percent from 2010 (100,004).

(See 2015 New York State Opioid Poisoning, Overdose and Prevention Report to Governor Cuomo and the NYS Legislature, page 1, available at: https://www.health.ny.gov/diseases/aids/general/opioid_overdose_prevention/docs/annual_report2015.pdf)

Under the federal Drug Addiction Treatment Act of 2000 (DATA 2000), qualified physicians are authorized to treat patients with opioid dependency, including heroin, with buprenorphine. Prior to the legislation the only treatment option for patients dependent on opioids was in a methadone treatment clinic. DATA 2000 increased the accessibility of treatment for opioid use disorder, or more commonly referred to as, opiate addiction, in a community setting.

Many patients with substance use disorders, especially those living in rural areas, are underserved due to the lack of authorized physicians under DATA 2000. In July 2016, to address this issue, President Obama signed the Comprehensive Addiction and Recovery Act of 2016 (CARA) into law. CARA allows nurse practitioners and physician assistants to treat patients dependent on opioids with buprenorphine in an office-based setting. (See P.L. 114-198.) However, the Department’s regulations, which were drafted in 2004, do not currently allow for this expanded field of providers and should be amended.

Further, to address the rapidly growing need to treat opioid use disorder in the office-based setting nationwide, the Department of Health and Human Services (HHS) recently adopted a rule to lift the limits on the number of patients doctors can treat with buprenorphine from 100 to 275. The rule increased access to medication-assisted treatment (MAT), which includes opioid treatment programs (OTPs). (See 81 FR 44711.) MAT combines medications, such as buprenorphine, and behavioral therapy to treat substance use disorders. With the adoption of this new federal rule, the Department’s regulations refer to the now outdated prescribing limits.

The Department is proposing amendments to Section 80.84 to ensure consistency with these federal laws and regulations.

Costs:

Costs to Regulated Parties:

The amendment would not impose costs to regulated parties. The regulations simply increase access to treatment for persons addicted to opioids.

Costs to State Government:

There will be no additional costs to state government as a result of the proposed amendment.

Costs to Local Governments:

There will be no additional costs to local government as a result of the proposed amendment.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional cost, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments would not increase paperwork requirements.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The Department could choose to retain existing standards. This option was rejected because the discrepancy between federal and State standards would confuse practitioners and defeat the purpose of CARA, which is to expand access to treatment of people addicted to opioids.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

This regulation will become effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

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 amendment, that it will not have an adverse impact on jobs and employment opportunities.

Public Service Commission

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

Pole Attachment Rates

I.D. No. PSC-21-17-00011-P

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

Proposed Action: The Commission is considering a petition from the New York Municipal Power Agency to increase its proxy pole attachment rate used by its municipal utility members.

Statutory authority: Public Service Law, sections 65, 66 and 119-a
Subject: Pole Attachment Rates.

Purpose: To consider an update to the proxy pole attachment rate used by New York Municipal Power Agency’s municipal utility members.

Substance of proposed rule: The Commission is considering the petition of the New York Municipal Power Agency made on April 24, 2017, to increase its pole attachment proxy rate used by its municipal utility members. The proposed annual pole attachment proxy rate would increase from \$8.51 to \$14.04, per equivalent pole, and is based on the currently-effective pole attachment rate of New York State Electric & Gas Corporation. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 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.

(17-E-0243SP1)

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

Compensation for Distributed Generation Systems Located at Farms

I.D. No. PSC-21-17-00012-P

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

Proposed Action: The Commission is considering a petition filed by Dairy Farmers of America, Agri-Mark Dairy Cooperative, and Vanguard Renewables on May 5, 2017 requesting the creation of a Farm Distributed Generation program.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), (2), (3), 66(2) and (5)

Subject: Compensation for distributed generation systems located at farms.

Purpose: To consider appropriate compensation and policies for distributed generation systems located at farms.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition for Farm Distributed Generation From Farm Digesters, filed by Dairy Farmers of America, Agri-Mark Dairy Cooperative, and Vanguard Renewables on May 5, 2017. The petition requests that the Commission create a Farm Distributed Generation program to permit farm digesters to provide renewable energy to local businesses in a manner similar to the Community Distributed Generation Program. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the relief requested in the petition and may resolve related matters.

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

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

Public comment will be received until: 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.

(15-E-0751SP6)

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

Establishment and Implementation of Earnings Adjustment Mechanisms

I.D. No. PSC-21-17-00013-P

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

Proposed Action: The Commission is considering a petition filed by Orange and Rockland Utilities, Inc. to establish and implement Earnings Adjustment Mechanisms.

Statutory authority: Public Service Law, sections 5(1), 65(1), 66(1) and (12)

Subject: Establishment and implementation of Earnings Adjustment Mechanisms.

Purpose: To consider the establishment and implementation of Earnings Adjustment Mechanisms.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by Orange and Rockland Utilities, Inc. (the Company) on February 13, 2017, to establish and implement Earnings Adjustment Mechanisms (EAMs) in accordance with the Commission’s Order Adopting a Ratemaking and Utility Revenue Model Policy Framework in Case 14-M-0101. The Company proposes EAMs related to 1) System Efficiency; 2) Energy Efficiency; 3) Distributed Generation Interconnection; and 4) Advanced Metering Infrastructure Customer Engagement. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the petition proposed and may resolve other related matters.

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

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