The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Licensed nursing homes are located in these identified rural areas.

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

These regulations require all nursing homes, including those in rural areas, to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Compliance Costs:

The purpose of this regulation is to require nursing homes to maintain adequate stockpiles of PPE. The initial cost to nursing homes as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, nursing homes will soon be statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12); further, the federal Occupational Health and Safety Administration (OSHA) has recommended that nursing homes ensure that staff have access to sufficient PPE to perform their jobs safely, and employers are currently obligated to pay for personnel PPE pursuant to OSHA regulations at 29 CFR 1910.132(h). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

As these regulations simply require nursing homes to maintain stockpiles of PPE, which is consistent with the directive in Public Health Law section 2803(12) for nursing homes to maintain or contract to have at least a two-month supply of PPE, as well as OSHA regulations and recommendations regarding the payment for and provision of PPE any adverse impacts are expected to be minimal.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

Job Impact Statement

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

NOTICE OF ADOPTION

Reduce Hospital Capital Rate Add-on and Reduce Hospital Capital Reconciliation Payment

I.D. No. HLT-39-20-00003-A
Filing No. 28
Filing Date: 2021-01-20
Effective Date: 2021-02-03

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

Action taken: Amendment of section 86-1.25 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)(b)

Subject: Reduce Hospital Capital Rate Add-on and Reduce Hospital Capital Reconciliation Payment.

Purpose: To include a 5 percent reduction to the budgeted and actual capital add-on in Article 28 hospital inpatient reimbursement rates.

Text or summary was published in the September 30, 2020 issue of the Register, I.D. No. HLT-39-20-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Ingredient Disclosures for Vapor Products and E-Cigarettes

I.D. No. HLT-05-21-00011-P

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

Proposed Action: Addition of Part 1006 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 1701

Subject: Ingredient Disclosures for Vapor Products and E-Cigarettes.

Purpose: To provide for enhanced public awareness of the chemicals used in vapor products and electronic cigarettes.

Text of proposed rule: A new Chapter XIV, Part 1006 is added to read as follows:

Chapter XIV Vapor Products

Part 1006. Ingredient Disclosures for Vapor Products and E-Cigarettes

1006.1. Definitions.

As used in this Part:

(a) "Vapor products" shall mean any vapor product, as defined by Public Health Law § 1399-aa, intended or reasonably expected to be used with or for the consumption of nicotine.

(b) "Electronic cigarette" or "e-cigarette" shall mean an electronic cigarette or e-cigarette as defined by Public Health Law § 1399-aa.

(c) "Ingredient" shall mean each of the following:

(i) any intentionally added ingredient present in any quantity in a vapor product;

(ii) a byproduct or contaminant, present in a vapor product in any quantity equal to or greater than one-half of one percent of the content of such product by weight;

(iii) a byproduct present in a vapor product in any quantity less than one-half of one percent of the content of such product by weight, provided such element or compound is a chemical of concern; and

(iv) a contaminant present in a vapor product in any quantity less than one-half of one percent of the content of such product by weight, provided such element or compound is a chemical of concern.

(d) "Intentionally added ingredient" shall mean any element or compound that a manufacturer has intentionally added to a vapor product at any point in such product's supply chain, or at any point in the supply chain of any raw material or ingredient used to manufacture such product.

(e) "Byproduct" shall mean any element or compound in the finished

vapor product, or in the vapor produced during consumption of a vapor product, which:

(i) was created or formed during the manufacturing process as an intentional or unintentional consequence of such manufacturing process at any point in such product's supply chain, or at any point in the supply chain of any raw material or ingredient used to manufacture such product; or

(ii) is created or formed as an intentional or unintentional consequence of the use of an e-cigarette or consumption of a vapor product. "Byproduct" shall include, but is not limited to, an unreacted raw material, a breakdown product of an intentionally added ingredient, a breakdown product of any component part of an e-cigarette, or a derivative of the manufacturing process.

(f) "Contaminant" shall mean any element or compound present in a vapor product as an unintentional consequence of manufacturing. Contaminants include, but are not limited to, elements or compounds present in the environment which were introduced into a product, a raw material, or a product ingredient as a result of the use of an environmental medium, such as naturally occurring water, or other materials used in the manufacturing process at any point in a product's supply chain, or at any point in the supply chain of any raw material or ingredient used to manufacture such product.

(g) "Manufacturer" shall mean any person, firm, association, partnership, limited liability company, or corporation which produces, prepares, formulates, or compounds a vapor product or e-cigarette, or whose brand name is affixed to such product. In the case of a vapor product or e-cigarette imported into the United States, "manufacturer" shall mean the importer or first domestic distributor of such product if the entity that manufactures such product or whose brand name is affixed to such product does not have a presence in the United States.

(h) "Chemical of Concern" shall mean any element or compound identified on the following lists:

(i) United States Food and Drug Administration's Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke, as published in the Federal Register on April 3, 2012 (77 Fed. Reg. 20034 – 20037) and available for public inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237; and

(ii) United States Food and Drug Administration's proposed additions to the Harmful and Potentially Harmful Constituents in Tobacco Products and Tobacco Smoke as published in the Federal Register on August 5, 2019 (84 Fed. Reg. 38032 – 38035) and available for public inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237.

1006.2. Ingredient Disclosure

(a) Manufacturers of vapor products or e-cigarettes distributed, sold, or offered for sale in this state, whether at retail or wholesale, shall furnish to the Commissioner for public record and post on such manufacturer's website, in a machine-readable format, the information described in this Section.

(b)(i) For each vapor product, the information posted pursuant to this section shall include, at a minimum:

(a) Manufacturer information including name and address of the business entity and contact information for a point-of-contact, including name, address, telephone number, and email address.

(b) A list naming each ingredient of such vapor product and all expected functions of each ingredient. The ingredients must be listed in descending order of predominance by weight in such product, except that ingredients present at a weight below one percent may be listed following other ingredients without respect to the order of predominance by weight.

(c) The nature and extent of investigations and research performed by or for the manufacturer concerning the effects on human health of such product or its ingredients. This includes but is not limited to health-related documents required by section 904(a)(4)of Title 21 of the United States Code (a copy of which is available for copying and inspection at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237). Any investigations and research that was developed after the required submission of health-related documents to the United States Food and Drug Administration must also be posted.

(d) Where applicable, a statement disclosing that an ingredient of such product is a chemical of concern.

(e) For each ingredient that is a chemical of concern, an evaluation of the availability of potential alternatives and potential hazards posed by such alternatives.

(ii) For each e-cigarette, the information posted pursuant to this section shall include, but shall not be limited to:

(a) Manufacturer information including name and address of the business entity and contact information for a point-of-contact, including name, address, telephone number, and email address.

(b) A list naming any toxic metal, including but not limited to lead, manganese, nickel, chromium, or zinc, as a constituent of any heating element included in such e-cigarette.

(c) A list naming each byproduct that may be introduced into vapor produced during the normal use of such e-cigarette.

(d) The nature and extent of investigations and research performed by or for the manufacturer, or that the manufacturer is aware of, concerning the effects on human health of such product or such ingredients. This includes but is not limited to health-related documents required by section 904(a)(4) of Title 21 of the United States Code (a copy of which is available for copying and inspection at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237). Any investigations and research that was developed after the required submission of health-related documents to the United States Food and Drug Administration must also be posted.

(e) Where applicable, a statement disclosing that an ingredient is published as a chemical of concern.

(f) For each constituent of any heating element identified as a toxic metal and ingredient published as a chemical of concern, an evaluation of the availability of potential alternatives and potential hazards posed by such alternatives.

1006.3 Proprietary Information

(a) For purposes of this Part only, proprietary information may consist of any information subject to disclosure pursuant to this Part the disclosure of which would compromise a manufacturer's competitive position. Any proprietary information submitted or divulged to the Department of Health pursuant to this Part shall not be available for, or subject to, public disclosure. Proprietary information shall include, but is not limited to, any:

(i) Commercially valuable plan, formula, process, or device that is used for the making, preparing, or processing of vapor products, e-cigarettes, or their components, and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the proprietary information and the productive process; or

(ii) Valuable data or information which is used in a manufacturer's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.

(b) A manufacturer submitting information to the Department pursuant to this Part may designate part or all of the information in such records as exempt from disclosure. The Manufacturer may make this designation either at the time the records are submitted to the Department or within a reasonable time thereafter. Such designation must be in writing and must set forth the reasons why the information should be excepted from disclosure as proprietary information, including, as appropriate:

(i) the specific information requested to be considered proprietary information, including, where applicable, page, form, line, chart or table designation;

(ii) the confidential nature of the record, including a description of the nature and extent of the injury to the manufacturer's competitive position such as unfair economic or competitive damage which would be incurred were the information to be disclosed;

(iii) whether the information is treated as confidential by the manufacturer, including whether it has been made available to any other manufacturer or to the public;

(iv) whether any patent, copyright, or similar legal protection exists for the information;

(v) whether the public disclosure of such information is otherwise restricted by law, and the specific source and contents of such restrictions;

(vi) the date upon which such information will no longer need to be kept confidential, if applicable;

(vii) whether the request itself constitutes information which, if disclosed, would defeat the purpose for which proprietary status is sought;

(viii) whether the information is known outside of the business of the manufacturer, and the extent to which the record is known by the employees and others involved in the business of the manufacturer;

(ix) the value of the information to the manufacturer and to its competitors;

(x) the amount of effort or money expended by the manufacturer in developing the information, and the ease or difficulty with which the information could be properly acquired or duplicated by others;

(xi) any other factors considered relevant.

(c) When information designated as proprietary information has been submitted to the Department, it shall be excepted from disclosure and maintained apart by the Department from all other records until 15 days after the entitlement to such exception has been finally determined by the Commissioner or such further time as ordered by a court of competent jurisdiction.

(d) A denial of an exception from disclosure requested pursuant to this section shall be final.

(e) The Commissioner shall not approve any exceptions under this section with respect to any ingredient that is a chemical of concern on one or more lists identified by the Commissioner.

1006.4 Schedule of Disclosure

Manufacturers shall furnish the information required to be posted pursuant to this section within thirty days of the effective date hereof, and every two years thereafter. In addition, such manufacturers shall furnish such information: prior to the sale of any new vapor product or e-cigarette; when the formulation of a currently disclosed product is changed such that the predominance of the ingredients in such product is changed, prior to the product being sold at retail; or at such other times as may be required by the Commissioner.

1006.5 Penalties

Any manufacturer who violates any of the provisions of, or who fails to perform any duty imposed by this Part shall be liable, in the case of a first violation, for a civil penalty not to exceed five thousand dollars. In the case of a second or any subsequent violation, the liability shall be for a civil penalty not to exceed ten thousand dollars for each such violation.

Text of proposed 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

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

Statutory Authority:

The Commissioner of Health is authorized by Section 1701 of the Public Health Law (PHL) to promulgate regulations implementing Article 17 of the Public Health Law, pertaining to the public disclosure of the ingredients of vapor products and electronic cigarettes.

Legislative Objectives:

The legislative objective of PHL Article 17 is to increase public awareness of the ingredients found in vapor products and electronic cigarettes, and to improve the public health by ensuring consumers are aware when such ingredients are potentially harmful.

Needs and Benefits:

On August 16, 2019, the New York State Department of Health issued a statewide health advisory to health care providers following reports regarding severe pulmonary illness in people who had reported use of vapor products prior to symptom onset. New York State took immediate action in an effort to identify commonalities among the cases, provide guidance to health care providers, and issue warnings to consumers to halt use of vaping products until the cause of illness could be identified. While a definitive cause for this vaping associated pulmonary illnesses has not be identified, it was postulated that use of vitamin E acetate as a diluent in the vaping liquid was the likely source of the surge in cases.

This public health crisis highlighted the lack of vaping and electronic cigarette ingredient information available to the public, health care providers, or public health professionals working to identify a potential cause for these illnesses. While the U.S. Food and Drug Administration requires vaping and electronic cigarette manufacturers to submit an ingredient list for each of their products, there is no requirement for the ingredient information to be made easily accessible to the public.

In order to educate New Yorkers about the contents of the vaping products and electronic cigarettes they purchase for use, and to help protect the public health where such products contain chemicals of concern, the Legislature enacted a new Article 17 of the PHL, in Chapter 56 of the Laws of 2020, which requires manufacturers to disclose to the public all ingredients used to make both the vaping liquid and the components of the electronic cigarette. Additionally, the law requires manufacturers to disclose to the public any byproduct or contaminant present in the vaping liquid, electronic cigarette, or vaping aerosol produced when the e-cigarette is used. The proposed regulations are necessary to implement this law.

In particular, the proposed regulations identify chemicals of concern that pose a greater potential for human health risks from exposure. This regulation will require manufacturers to highlight if any portion of their product (the vaping liquid, electronic cigarette, or the aerosol emitted from these products) contains an intentionally added ingredient, a byproduct, or a contaminant that has been identified as a chemical of concern. This will allow New Yorkers to make informed decisions about the products they purchase for use. It will also encourage manufacturers to find innovative ways to either replace or remove substances with greater potential for harm from vaping products and electronic cigarettes sold in NYS. Additionally, having ingredient, byproduct, and contaminant information readily available for vaping products and electronic cigarettes that are sold for use in NYS will provide a valuable source of information if these types of devices are associated with an outbreak of illnesses in the future.

In accordance with PHL Article 17, the proposed regulations provide for procedures necessary to protect the confidentiality of vapor product manufacturer's proprietary information, except with regard to those ingredients identified in the proposed regulation as chemicals of concern.

Costs to Private Regulated Parties:

The cost to manufacturers is expected to be minimal. Manufacturers have already been required to disclose their ingredients and health-related studies to the U.S. Food and Drug Administration. Additionally, the department's list of chemicals of concern comes from the U.S. Food and Drug Administration's established list of harmful or potentially harmful constituents of tobacco products (93 chemicals) as well as their proposed list of 19 additional chemicals that would be specific to vapor products and electronic cigarettes. Manufacturers are already required to report the levels of these harmful or potentially harmful chemicals to the U.S. Food and Drug Administration. The only additional requirement for manufacturers resulting from these regulations is to post each product's ingredient, byproduct, and contaminant information on their website. They must also highlight if any of their ingredients, byproducts, or contaminants have been identified as a chemical of concern.

Costs to State Government and Local Government:

The Department of Health will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law.

Local government will incur no new costs.

Local Government Mandates:

The proposed regulation imposes no new mandates on local governments.

Paperwork:

All manufacturers of vapor products will be required to report to the Commissioner the ingredients of their products, and related health studies as defined herein. However, manufacturers of vapor products are already required to report this information to the U.S. Food and Drug Administration. As such, additional paperwork is anticipated to be minimal.

Duplication:

The proposed regulations would not duplicate any State or federal regulations.

Alternatives:

The proposed regulations implement mandatory disclosure requirements imposed by PHL Article 17. As such, no alternatives were considered.

Federal Standards:

21 U.S.C. 387d, and regulations promulgated thereunder, requires that vapor product manufactures disclose their product's ingredients and health-related studies to the U.S. Food and Drug Administration.

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

All vapor product manufacturers will be required to comply with the proposed rule, which implements the requirements of PHL Article 17. Some vapor product manufacturers may be small businesses; however, the effect of the rule is anticipated to be minimal as the requirements largely mirror federal reporting requirements.

No local governments will be impacted by the proposed regulations.

Compliance Requirements:

The proposed regulations will require manufacturers of vapor products to disclose, to the Commissioner and to the public, their product's ingredients as well as health-related studies regarding such ingredients.

Professional Services:

As vapor product manufacturers are already required to report ingredients and health-related studies to the U.S. Food and Drug Administration, additional professional services should not be necessary.

Compliance Costs:

The cost to manufacturers is expected to be minimal. Manufacturers have already been required to disclose their ingredients and health-related studies to the U.S. Food and Drug Administration. Additionally, the department's list of chemicals of concern comes from the U.S. Food and Drug Administration's established list of harmful or potentially harmful constituents of tobacco products (93 chemicals) as well as their proposed list of 19 additional chemicals that would be specific to vapor products and electronic cigarettes. Manufacturers are already required to report the levels of these harmful or potentially harmful chemicals to the U.S. Food and Drug Administration. The only additional requirement for manufacturers resulting from these regulations is to post each product's ingredient, byproduct, and contaminant information on their website. They must also

highlight if any of their ingredients, byproducts, or contaminants have been identified as a chemical of concern.

Economic and Technological Feasibility:

There are no economic or technology impediments to any of the proposed rule changes.

Minimizing Adverse Impact:

Adverse impacts on manufacturers are expected to be minimal. Manufacturers have already been required to disclose their ingredients and health-related studies to the U.S. Food and Drug Administration.

Small Business and Local Government Participation:

A copy of the draft proposed rule was sent via e-mail to several professional associations representing vapor product manufacturers for input.

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 a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. The penalties described in the regulations mirror those already established in PHL Article 17. As such, this proposed regulation does not create a new penalty or sanction, and no cure period is necessary.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (https://www.census.gov/quickfacts/). At present, it is unknown how many vapor product manufacturers are located in these counties.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010. At present, it is unknown how many vapor product manufacturers are located in these counties.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

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

All manufacturers of vapor products will be required to report to the Commissioner the ingredients of their products, and related health studies as defined herein. However, manufacturers of vapor products are already required to report this information to the U.S. Food and Drug Administration. As such, additional recordkeeping is anticipated to be minimal.

As vapor product manufacturers are already required to report ingredients and health-related studies to the U.S. Food and Drug Administration, additional professional services should not be necessary.

Costs:

The cost to manufacturers is expected to be minimal. Manufacturers have already been required to disclose their ingredients and health-related studies to the U.S. Food and Drug Administration. Additionally, the department's list of chemicals of concern comes from the U.S. Food and Drug Administration's established list of harmful or potentially harmful constituents of tobacco products (93 chemicals) as well as their proposed list of 19 additional chemicals that would be specific to vapor products and electronic cigarettes. Manufacturers are already required to report the levels of these harmful or potentially harmful chemicals to the U.S. Food and Drug Administration. The only additional requirement for manufacturers resulting from these regulations is to post each product's ingredient, byproduct, and contaminant information on their website. They must also highlight if any of their ingredients, byproducts, or contaminants have been identified as a chemical of concern.

Minimizing Adverse Impact:

Adverse impacts on manufacturers are expected to be minimal. Manufacturers have already been required to disclose their ingredients and health-related studies to the U.S. Food and Drug Administration.

Rural Area Participation:

A copy of the draft proposed rule was sent via e-mail to several professional associations representing vapor product manufacturers for input.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Department of Labor

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Unemployment Insurance (UI) Definition of "Day of Total Unemployment"

I.D. No. LAB-05-21-00003-EP
Filing No. 27
Filing Date: 2021-01-15
Effective Date: 2021-01-18

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

Proposed Action: Amendment of section 470.2 of Title 12 NYCRR.

Statutory authority: State Administrative Procedure Act, section 202(6); Labor Law, sections 21(11) and 530(1)

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

Specific reasons underlying the finding of necessity: This emergency regulation is necessary to assist unemployed New Yorkers return to the workforce after experiencing employment loss caused by the COVID-19 public health and economic crisis. The economic impact of COVID-19 has resulted in significant financial insecurity for workers and employers. An unprecedented number of workers suffered employment loss in the past year -- since March 2020, the New York State Department of Labor paid over $60 billion in unemployment benefits to approximately 3.9 million New Yorkers. The current interpretation of New York's UI law results in barriers that discourage part-time employment, despite the fact that part-time work can serve as a bridge to full-time employment, including developing skills and connections, augmenting household income, and ultimately reducing dependence on UI. Part-time employment opportunities will play an important role in allowing businesses to build back and especially while operating at a reduced capacity in response to the public health crisis. UI claimants who try to return to work by accepting partial employment are currently penalized by reductions in weekly unemployment benefits – for each day in a week that a claimant works, the claimant's weekly benefit is reduced by 25%, regardless of whether the claimant works one hour or a full day. This emergency regulation defining terms within the UI law will allow UI claimants to work up to 30 hours while still collecting some UI benefits. Greater flexibility to seek job opportunities without losing UI benefits is necessary to public health, safety, and the general welfare by ensuring that UI claimants and employers are able to meet their weekly financial needs in the midst of the COVID-19 public health and economic crisis.

Subject: Unemployment Insurance (UI) definition of ''day of total unemployment''.