State Aid for Public Health Services: Counties and Cities

Effective date: 12/13/14

Summary of Express Terms

Article 6 of the Public Health Law (PHL) sets forth the statutory framework for the Departments' State Aid program, which partially reimburses local health departments (LHDs) for eligible expenses related to specified public health services. The objectives of these amendments is to conform the State Aid regulations to recent statutory changes to PHL Article 6; clarify, simplify, and reorganize all of the regulations; and to modernize certain regulations, including standards of performance for eligible public health services.

The Department does not expect the non-conformance amendments to result in any significant increased costs. The proposed regulations were developed with considerable input from New York State Association of County Officials (NYSACHO), through numerous meetings. NYSACHO has not indicated that these regulations, which aim to reduce administrative burdens on LHDs, will result in any significant increased costs.

The regulations implementing the State Aid program are set forth in 10 NYCRR Part 39 and Subparts 40-1 and 40-2. Part 39 and Subpart 40-1 establish the administrative aspects of State Aid, including the application and payment mechanisms. Subpart 40-2 establishes the standards of performance for eligible public health services.

These regulations repeal Part 39 and Subparts 40-1 and 40-2 in their entirety. New Subparts 40-1 and 40-2 are issued. The relevant provisions of Part 39 are incorporated into a new Subpart 40-1; accordingly, Part 39 is not being reissued.

With this in mind, these regulatory amendments can be organized into three categories:

- Conformance Changes, for changes necessary to conform the regulations to the recent statutory changes to Article 6 of the PHL;
- Non-conformance Changes – Administrative, for changes to the administrative aspects of State Aid, currently set forth in Part 39 and Subpart 40-1, and now provided solely in Subpart 40-1; and
- Non-conformance changes – Standards of Performance, for changes to the performance standards for core public health services, set forth in Subpart 40-2.

The conformance changes can be summarized as follows:

- All references to the "Municipal Public Health Services Plan" (MPHSP) and Fee and Revenue Plan are removed.
- The regulations describing the State Aid Application (SAA) are amended to reflect that the SAA is now comprised of the following sections: an organizational chart and list of the number of employees providing public health services; a proposed budget; a description of how the LHD will provide public health services; an attestation by the chief executive officer of the municipality that sufficient funds have been appropriated to provide public health services; an attestation by the public health commissioner or director that the LHD has

exercised due diligence in reviewing the SAA and that the application seeks State Aid only for eligible public health services; a list of public health services provided by the LHD that are not eligible for State Aid; a projection of fees and revenues to be collected for public health services eligible for State Aid and any other information or documents required by the commissioner.

- The regulation describing the duties of the local commissioner of health or public health director is revised to reflect that such official may serve as the head of a merged agency or multiple agencies if approved by the commissioner, or serve as the local commissioner of health or public health director of additional counties when authorized pursuant to section 351 of the PHL.
- The definition of "maintenance of effort"—i.e., the funding level at which an LHD must maintain services—and the calculation of the penalty for failing to comply, have been simplified.
- Subpart 40-2, which provides the standards of performance for public health services required for State Aid eligibility, is updated to include the following six core public health services: Family Health, Communicable Disease Control, Chronic Disease Prevention, Community Health Assessment, Environmental Health, and Emergency Preparedness and Response. In particular, Chronic Disease Prevention and Emergency Preparedness, which had been a subset of "Disease Control", are now distinct core services. Public Health Education, which was a distinct core service, has been eliminated and the activities incorporated into each of the core services.

The non-conformance administrative changes to Subpart 40-1 involve significant simplification, clarification, and reorganization of all related provisions. For example, the existing sections relating to fees and revenues are updated and clarified. The regulations clarify that LHDs must make reasonable efforts to collect fees and revenue. The provisions setting forth the activities that are ineligible for State Aid is moved to Subpart 40-2, reorganized and clarified. These and other administrative changes to Subpart 40-1 are described in more detail in the Regulatory Impact Statement.

The non-conformance changes to the performance standards in Subpart 40-2 can be summarized as follows:

- The Family Health core service is amended to focus services in the following areas: Child Health, Maternal and Infant Health, and Reproductive Health sections.
- The requirements of the Chronic Disease Prevention core service are revised to focus LHDs on working with community partners to implement policy rather than on providing direct patient care.
- In the Communicable Disease Prevention core service, the section relating to General Communicable Disease control is amended to reflect best practices, which include requiring LHDs to provide communications to health care providers, clinics and laboratories on how to decrease the spread of communicable disease. The sections on Sexually Transmitted Diseases and Human Immunodeficiency Virus are consolidated.

- The Community Health Assessment section now requires LHDs to create a Community Health Improvement Plan.
- The requirements of the Environmental Health core service are simplified.
- A new core service, Emergency Preparedness and Response, is added to reflect the LHD's active role in assuring the community is adequately prepared to respond to emergencies.

Pursuant to the authority vested in the Commissioner of Health by sections 602, 603 and 619 of the Public Health Law; and by sections 201, 2201, 2202, and 2276 of the Public Health Law and section 4 of chapter 623 of the laws of 1981; Part 39, Subpart 40-1, and Subpart 40-2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are repealed, new Subparts 40-1 and 40-2 are adopted, and Parts 43 and 44 are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

PART 40

STATE AID FOR PUBLIC HEALTH SERVICES: COUNTIES AND CITIES

(Statutory authority: Public Health Law, art. 6, §§ 602, 603 and 619)

Subpart 40-1 **Application and Payment**

Subpart 40-2 **Performance Standards and Minimum Requirements for Core Public Health Services**

Subpart 40-4 **Fee and Revenue Plan for Departmental Services**

SUBPART 40-1

APPLICATION AND PAYMENT

Sec.

40-1.0 Applications for State Aid.

(a) To be eligible for State Aid, local health departments shall annually submit to the department a detailed application for State Aid in a form specified by the commissioner.

(b) Each local health department shall submit its application for State Aid to the department no later than two months after the commencement of the fiscal year for which it is seeking State Aid.

(c) The application for State Aid shall include:

(1) an organizational chart of the local health agency and a list of the number of employees by job title providing public health services;

(2) a budget of proposed expenditures;

(3) a description of how the local health department will provide public health services in a form determined by the commissioner;

(4) an attestation by the chief executive officer of the municipality that sufficient local funds have been appropriated to provide the public health services for which the local health department is seeking State Aid;

(5) an attestation by the public health commissioner or director that the local health department has exercised due diligence in reviewing the State Aid application and that the application seeks State Aid only for eligible public health services;

(6) a list of public health services provided by the local health department that are not eligible for State Aid, and the cost of each service;

(7) a projection of the fees and revenues to be collected for public health services eligible for State Aid; and

(8) any other information or documents required by the commissioner.

40-1.10 Performance and accountability; reporting.

(a) The commissioner shall establish, in consultation with the local health departments and the New York State Association of County Health Officials, uniform statewide performance standards for the services funded pursuant to Article 6 of the Public Health Law; provided, however, that upon request the commissioner may approve a modification of a specific standard for a local health department if such local health department demonstrates adequate justification. The commissioner shall recognize the particular needs and capabilities of the various local health departments. The commissioner shall monitor the performance and expenditures of each local health department to ensure that each one satisfies the performance standards.

(b) The commissioner shall establish, in consultation with the local health departments and the New York State Association of County Health Officials, a uniform accounting system for monitoring the expenditures for services of each local health department to which aid is granted and the amount of state aid received including any performance payments pursuant to section six hundred nineteen-a of Article 6 of the Public Health Law. Such reporting system shall require information on the amount of public health moneys received from the federal government, the private sector, grants, and fees.

40-1.20 Personnel.

(a) Local health department personnel must meet the entry and supervisory level qualifications established by Part 11 of the State Sanitary Code (10 NYCRR Part 11), as applicable.

(b) All public health services shall be supervised by a local commissioner of health or public health director, to ensure that such services are provided in accordance with the approved State Aid application. Such supervising official shall devote his or her entire time to public health duties, provided that:

(1) such official may serve as the head of a merged agency or multiple agencies if the approval of the commissioner is obtained; or

(2) such official may serve as the local commissioner of health or public health director of additional counties when authorized pursuant to section 351 of the public health law.

(c) All local health departments referred to herein shall not be in violation of the Civil Rights Act of 1964 (42 USCA 2000 et seq.) and the regulations promulgated by the United States Department of Health and Human Services (45 CFR part 80). The purpose of such statute and regulations is to assure that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied

the benefits of, or be otherwise subjected to discrimination under any program activity receiving Federal financial assistance from the Department of Health and Human Services. The local health department shall submit to the commissioner, in triplicate, the Assurance of Compliance form required by the Department of Health and Human Services. Such form must be submitted by present recipients of State Aid as well as by all future applicants.

40-1.30 Maintenance of effort.

(a) A local health department shall maintain public health programs and services and gross expenditures for those services at “base year” levels, as defined below.

(b) The base year shall be the most recent local health department fiscal year for which the local health department has filed all quarterly claim forms with the department.

(c) Maintenance of effort shall be monitored by the department throughout the fiscal year.

(d) Adjustment to State Aid reimbursement shall be made when a local health department reduces its expenditures beneath the amount expended in its base year. State Aid shall be reduced by the percentage reduction in expenditures between the base year and the current fiscal year. When calculating the amount by which a local health department has reduced its expenditure, the Commissioner shall exclude extraordinary

expenditures of a temporary nature, such as disaster relief; unavoidable or justifiable program reductions, such as a program being subsumed by another agency; or expenditures for which the local health department can demonstrate to the Commissioner's satisfaction that the need for the expenditure no longer exists.

40-1.40 Limitation on State Aid.

(a) State Aid may be limited, in whole in or part, if the commissioner determines, upon review of a local health department's State Aid application, that the local health department will not deliver a core public health service required by Subpart 40-2 of this title. In that event, the Commissioner may use the proportionate share that is not granted to the local health department to contract with agencies, associations, or organizations to provide such services, or expend such share to provide such services upon approval of the director of the division of budget, as authorized by section 605 of the Public Health Law.

(b) *Partial service counties.* The commissioner may approve a State Aid application that seeks funding for fewer than all core public health services required pursuant to Subpart 40-2 of this Part, provided that:

(1) a community health assessment is completed by the municipality pursuant to section 40-2.40 of this Part;

(2) the selected core services meet all standards for those services set forth in this Part; and

(3) the State Aid application identifies the availability of core public health services not provided by the local health department, who will provide those services and the manner in which the services will be provided and financed.

40-1.41 Withholding of State Aid.

(a) State Aid may be withheld, in whole or in part, if the commissioner determines, upon program review, that:

(1) core public health services were not performed in accordance with this Part, Article 6 of the Public Health Law, or the approved application for State Aid; or

(2) the local health department has not made every reasonable effort to collect fees for services set forth in section 40-1.51 of this Part.

(b) If, after notification that State Aid will be withheld pursuant this section, the local health department provides written justification within 60 days why such action is not warranted that is satisfactory to the commissioner, the commissioner may, within his or her discretion, adjust or cancel the withholding of State Aid.

(c) If the commissioner withholds funds pursuant to this section, the amount withheld shall be based on the cost of providing the missing or inadequate services by another agency or by the State.

40-1.50 Fees and revenue; quarterly reporting.

Each local health department shall:

(a) make every reasonable effort to collect fees and third-party billings revenue;

(b) maintain a written protocol for third-party billing and for assessment and collection of fees, including follow-up procedures for unpaid claims; and

(c) report quarterly to the commissioner, with its State Aid claim, each category of revenue collected.

40-1.51 Fees and revenue; services for which fees are charged.

(a) Environmental health services. Each local health department must charge a fee for the granting of a permit, inspections and other services prerequisite to the issuance of a permit:

-X-ray and radioactive materials (authorized programs only)

-Food service establishments (all types)

-Camps and recreation facilities

-Individual water and sewerage

-Realty subdivisions

-Mobile home parks

-Community and noncommunity water systems

-Tanning facilities

-Bathing beaches

-Swimming pools

-Recreational aquatic spray grounds

-Temporary residences (hotels/motels/bungalow colonies/cottage colonies, cabins)

-Mass gatherings and public functions

-Children’s camps

-Agricultural fairgrounds

-Migrant farm worker housing

-Multipurpose recreational facility

-Plan review

(b) Clinic health services. Where third-party reimbursement is not available, the local health department shall charge a fee for the following clinic health services, regardless of whether such services are provided directly or by contract. Subject to subdivision (b) of section 40-1.52 of this Part, where third-party reimbursement is available, the local health

department shall ensure that every reasonable effort is made to collect such reimbursement and any relevant co-payments.

-Sexually transmitted diseases, consistent with Public Health Law § 2304

-HIV counseling, testing, diagnosis and prevention

-Family planning

-Prenatal and postpartum care

-Primary care for children less than 21 years of age;

-Immunization

(c) Tuberculosis control. Fees for clinical health services related to tuberculosis control shall be governed by Part 43 of this Title.

(d) Rabies control. Local health departments shall make every reasonable effort to collect third-party reimbursement for the clinical health services for rabies control, when such services are provided by the local health department.

(e) Nothing in this section shall be deemed as prohibiting local health departments from charging fees for other public health services.

40-1.52 Fees and revenue; calculation.

(a) For all fees, the calculation of fees shall be based on the cost to the municipality of providing the service and shall not exceed the cost to the local health department of providing the service for which the fee is to be charged.

(b) For those clinic health services for which a fee is authorized, the fee to the individual shall be based upon the ability of the recipient to pay. A sliding fee schedule shall be established for this purpose and made available to all recipients of service.

(c) The local health department may request the commissioner’s approval to waive fee assessments, based on documentation that charging a fee would create a substantial barrier to obtaining the public health service. The commissioner's decision on whether or not to grant such waivers shall be conclusive.

Section 40-1.53 Fees and revenue; deduction and offset.

(a) All revenues collected by the local health department or the contractor shall be deducted from eligible expenditures to produce a net amount of expenditures eligible for State Aid, except that municipalities may provide accounting documentation for the withholding from deduction any earned revenue attributable to projects and services ineligible for State Aid reimbursement, as enumerated in 40-2.3. The commissioner may exclude such revenue from deduction limited to documentation submitted.

40-1.60 Submission of claims.

(a) Quarterly claims for State Aid reimbursement must be accompanied by supporting documentation to enable calculation of State Aid amounts as shall be determined by the commissioner or his or her designee. Such documentation shall include, but not be limited to:

(1) a duly certified State Aid claim form;

(2) a clear statement of expenditures for each service included in the State Aid application; and

(3) a clear statement of each item of revenue earned during the reporting period.

(b) All expenses for which a claim is submitted shall be accounted for and reported using the cash basis method of accounting.

(c) Claims shall be prepared in accordance with 2 CFR Part 200 – "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

(d) A claim shall be deemed complete if it complies with subdivisions (a), (b) and (c) of this section.

(e) Complete claims for the first three quarters of a program year must be submitted by the local health department for State Aid no later than two months after the end of the quarter in which the expenditures claimed occurred. Complete fourth quarter claims must be submitted no later than three months from the end of the program year in which expenditures claimed occurred. Claims received later than such prescribed time limits may be returned unpaid by the commissioner. Returned claims may not be resubmitted.

(f) In the event that a local health department submits any quarterly claim later than six months after the end of the program year in which the expenditures claimed occurred, the commissioner may accept such claim only if the local health department has submitted a written statement which, in the commissioner's discretion, adequately explains the extraordinary circumstances justifying the delay.

(g) Claims for State Aid reimbursement must be supported by expenditure and revenue records, to be retained and made available to facilitate concurrent or post audit, until concurrent or post audit is completed. Records supporting actual revenues and costs incurred shall be maintained by the municipality for the period of six years after the close of the fiscal year to which they pertain and are subject to audit and review by the State.

40-1.61 Method of payment.

Expenditures by local health departments shall be reimbursed as follows, provided all requirements of this Part are met:

(a) Base grant:

(1) For local health departments providing all of the core services set forth in Subpart 40-2 of this Part, the State Aid base grant shall be 100 percent of net eligible expenditures for performance of these services to a maximum of $650,000 or the amount representing 65 cents per capita, whichever is greater.

(2) For local health departments that the commissioner has approved to provide fewer than all of the core services set forth in Subpart 40-2 of this Part, the State Aid base grant shall be 100 percent of net eligible expenditures for performance of approved core services to a maximum amount determined by the commissioner that reflects the reduced scope of services.

(3) For the purposes of this section, population shall be determined by the local population data published as of January 1 of each calendar year by the New York State Department of Health.

(b) A local health department's net eligible expenses for performance of core public health services, in excess of the base grant, shall be reimbursed at a rate consistent with section 616 of the Public Health Law, after review and approval of all State Aid applications.

40-1.62 Claims and method of payment; State Aid for physically handicapped children.

(a) For local health departments, State Aid for authorized medical services for physically handicapped children shall be paid at 50% of net expenses, where net expenses means total expenses less revenues received for such services. State Aid may be withheld if, on post-audit and review, the Commissioner finds that a medical service rendered was not in conformance with a plan submitted by the municipality or that the recipient of the medical service was not a physically handicapped child as defined in section 2581 of the Public Health Law.

(b) For American Indian children residing on a reservation, State Aid for authorized medical services for physically handicapped children shall be paid at 100% of net expenses for such services.

(c) To receive State Aid, the clerk of the board of supervisors or other similar governing body of each county, or chief fiscal officer of the city of New York, shall quarterly transmit to the Commissioner a certified statement stating the amount expended for the

purposes specified herein, the date of each expenditure and date of service, and the purpose for which it was made.

(d) To receive State Aid, complete claims for physically handicapped children must be received by the Commissioner within two years of the date of service.

SUBPART 40-2

PERFORMANCE STANDARDS AND MINIMUM REQUIREMENTS FOR CORE PUBLIC HEALTH SERVICES

(Statutory authority: Public Health Law, art. 6, §§ 602, 603 and 619)

Sec.

GENERAL PROVISIONS

40-2.0 Scope of Subpart 40-2.

In accordance with applicable provisions of Article 6 of the Public Health Law, this Subpart establishes standards of performance and minimum requirements for core public health services relating to Family Health, Communicable Disease Control, Chronic Disease Prevention, Community Health Assessment, Environmental Health, and Emergency Preparedness and Response.

40-2.1 General provisions concerning State Aid eligibility.

(a) Core public health services are eligible for State Aid reimbursement only if such services are included in an approved State Aid application and only if performed in accordance with this Subpart.

(b) Local health departments may contract for core public health services provided, however, that:

(1) to remain eligible for State Aid, any contract for core public health services must require that:

(i) core public health services shall be performed under the general supervision and control of the local health department commissioner or public health director;

(ii) if a contract relates to a core public health service for which a fee must be collected pursuant to section 40-1.51 of this Part, the contractor shall make every reasonable effort to collect such fee and, for clinic health services, the contractor shall make every reasonable effort to collect third-party reimbursement and any relevant co-payments; and

(iii) the contractor shall report to the local health department all fees, co-payments, and third-party reimbursement collected;

(2) pursuant to section 616 of the Public Health Law, the local health department shall not claim as State Aid eligible expenses any portion of the contract cost relating to indirect costs or fringe benefits, including but not limited to retirement funds, health insurance and federal old age and survivors insurance; and

(3) when the local health department provides clinic services pursuant to section 40-2.2 of this Part through a contract with another provider, the Commissioner has discretion to review and approve or disapprove the contract. When exercising such discretion, the Commissioner shall examine factors including, but not limited to, the quality of the proposed contractor's services, the ability the local health

department to oversee the contracted services, and the contractor's efficiency in delivering services.

40-2.2 State Aid eligibility; clinic services.

The cost of public health clinic services is allowable for only the following:

(a) clinic health services identified in subdivision (b) of section 40-1.51 of this Part, including clinics for sexually transmitted diseases, consistent with Public Health Law § 2304; HIV counseling, testing, diagnosis and prevention; family planning; immunization; primary care for children less than 21 years of age, provided that such services are only eligible for State Aid to the extent that the local health department makes good faith efforts to assist such persons with Medicaid or insurance enrollment, as applicable, and only until such time as insurance coverage becomes effective; and prenatal and postpartum care, provided that such services are only eligible for State Aid to the extent that the local health department makes good faith efforts to assist such women with Medicaid or insurance enrollment, as applicable, and only until such time as insurance coverage becomes effective;

(b) tuberculosis control;

(c) rabies control;

(d) dispensing countermeasures in the event of an actual or threatened public health emergency;

(e) other services consistent with section 602 of the Public Health Law and approved by the commissioner for State Aid reimbursement.

40-2.3 Projects and services ineligible for State Aid.

Activities, services, and costs that are ineligible for State Aid include, but are not limited to, the following:

(a) activities and services involving other agencies:

(1) Joint activities. If joint State-local or Federal-local activities have been approved in the State Aid Application, the portion financed from State funds, other than State Aid under this section, and Federal funds will be excluded from consideration for reimbursement.

(2) Activities carried out by any other agency. The cost of activities for which any other government agency has been given legal responsibility.

(b) health care programs and services:

(1) Primary care and medical treatment, except as specified in this Subpart.

(2) Hospitals and other health facilities. The construction, establishment, maintenance and operation of hospitals, clinics, laboratories, dispensaries or similar facilities, except for the costs of providing eligible public health services in public health clinics as specified in section 40-2.2 of this Part.

(3) The cost of inpatient hospital care of patients with communicable disease, except tuberculosis and syphilis patients.

(4) Home health services provided by a local health department, except for public health home visiting as described in this Subpart.

(5) Laboratory services unrelated to eligible services. The cost of laboratory services related to public health services that are ineligible for State Aid are also ineligible for State Aid.

(6) Emergency Medical Service or Ambulance service. The maintenance and operation of Emergency Medical Service and ambulance service or the dispatching of ambulances.

(7) Medical examiner programs, services or activities.

(8) Jail medical services. The cost of providing routine medical treatment to inmates of jails operated by the local health department or in the municipality, including routine admission screenings and primary care to inmates older than 21 years of age.

(9) Any and all health care services for the screening or treatment of chronic diseases.

(c) environmental health programs and services:

(1) The cost of abatement, remediation, management in place or any action that removes a public health nuisance from a property, or the cost of relocating persons exposed to public health nuisances, consistent with section 40-2.55 of this Part.

(2) The cost of removal or covering lead paint or of relocating persons exposed to lead paint, consistent with section 40-2.58 of this Part.

(d) infrastructure and administration costs:

(1) Treatment plants and other facilities. The construction, maintenance and operation of water or waste water treatment plants, swimming pools and bathing beaches, and public bathhouses.

(2) Treatment of water supplies. The cost of treatment of public water supplies, including costs of chemicals for fluoridation.

(3) Garbage and refuse disposal facilities. The cost of construction, maintenance and operation of facilities for garbage and refuse collection, incineration or disposal and air cleaning facilities.

(4) Plumbing inspection. Plumbing inspection for the purpose of checking conformity with building code provisions.

(5) Boards of examiners. Compensation or expenses paid to boards of examiners (e.g., boards of examiners for plumbers and barbers).

(6) Insurance coverage of local health department employees. The cost of personal liability or malpractice insurance purchased by the local health department or the cost of funded self-insurance for such liability when such expense is related to protection against personal liability or malpractice of its employees.

(7) Real property. The cost of acquisition or development of real property.

(8) Depreciation and interest on funding, including:

(i) The cost of depreciation of the space utilized by a health agency in a building owned by the same municipality that operates the health agency.

(ii) The cost of interest on the funding of buildings utilized by a health agency and owned by the same municipality that operates the health agency.

(9) Rent paid to city or county. All rent for space utilized for health agency purposes, if such rent is payable to the same municipality that operates the health agency.

(10) Indirect costs and fringe benefits. Contributions by the local health department for indirect costs and fringe benefits, including but not limited to contractor fringe and indirect costs, employee retirement funds, health insurance, workers' compensation, and Federal old age and survivor's insurance.

(e) other programs and services that the commissioner reasonably determines are not eligible under this Part.

FAMILY HEALTH

40-2.10 Family health; performance standards.

(a) The local health department shall maintain a family health program designed to achieve the following goals:

(1) improve the health of persons under the age of 21, including children with special health care needs;

(2) increase the proportion of persons under the age of 21 who receive comprehensive well child primary and preventive care, including oral health care;

(3) improve birth outcomes, decrease maternal and infant mortality and morbidity, and increase the number of pregnant and postpartum women who receive early, continuous and comprehensive prenatal and postpartum care, including oral health care, and other supportive services to address risks and needs; and

(4) decrease the rate of unintended pregnancies, increase optimal spacing of pregnancies, decrease the prevalence and morbidity of sexually transmitted disease, and improve availability and accessibility of comprehensive reproductive health care and family planning services to men and women of reproductive age.

(b) To be eligible for State Aid, the local health department shall conduct public health activities in the following areas:

(1) Child Health;

(2) Maternal and Infant Health; and

(3) Reproductive Health.

(c) The activities required under this subdivision (b) of this section shall include, at a minimum:

(1) utilization of available public health data and information to shape strategies related to child health, maternal and infant health and reproductive health, including:

(i) using available data from the community health assessment, other local assessments, and local knowledge;

(ii) identifying communities and/or neighborhoods where children, women and families are potentially in need of services;

(iii) identifying any specific local factors that influence children's health status, health care needs, maternal and infant birth outcomes, unintended pregnancy, and use of reproductive health care services; and

(iv) assess currently available services;

(2) public health marketing and communication, including developing or adapting public education materials or campaigns, and promoting and disseminating such materials or campaigns, to:

(i) promote the use of comprehensive health care services for children, women and families;

(ii) promote healthy behaviors, including the preconception, prenatal, postpartum and interconception periods; and

(iii) reduce risk factors associated with poor maternal and infant outcomes, unintended pregnancy, and sexually transmitted diseases and related health disparities;

(3) information, referral and assistance to women and families in accessing and effectively utilizing available services;

(4) outreach, education, training and technical assistance for health and human service providers, designed to improve the delivery of comprehensive primary and preventive care to women and families, including, at least one annual

communication to health care providers on health data and interventions related to family health;

(5) efforts with multiple sectors in the community to promote policy, environmental and systems change to address population and community level factors that influence child health outcomes and use of health care services, birth outcomes, and reproductive health outcomes and services; and

(6) activities to identify uninsured women and families and to provide such persons, either directly or through referral, with assistance with enrollment in health insurance coverage and comprehensive prenatal care, child health care, primary care services, and reproductive health services.

40-2.11 Family health; services eligible, but not required, for State Aid.

The following public health services are eligible for State Aid but not required as a condition of State Aid eligibility:

(a) primary care services to uninsured persons under 21 years of age, in a clinic setting, provided that such services shall be eligible for State Aid only to the extent that the local health department makes good faith efforts to assist such persons with Medicaid or other insurance enrollment, as applicable, and only until such time as insurance coverage becomes effective;

(b) provision of public health home visits associated with eligible services. Such public health home visits may include visits only for the following purposes: assessing women's preconception, prenatal, postpartum and interconception health and social support needs; assessing child and family health and social support needs; providing information to promote positive birth outcomes and child health; and referring persons to needed services. Activities undertaken in relation to the Child Find System under the Early Intervention Program, as required pursuant to 10 NYCRR 69-4.1(c) and 69-4.2, shall not be eligible for State Aid;

(c) provision of reproductive health care and family planning services for men and women of reproductive age, in a clinic setting; and

(d) prenatal and postpartum care, in a clinic setting, provided that such services shall be eligible for State Aid only to the extent that the local health department makes good faith efforts to assist such women with Medicaid or insurance enrollment, as applicable, and only until such time as insurance coverage becomes effective.

COMMUNICABLE DISEASE CONTROL

40-2.20 Sexually Transmitted Diseases (STDs) and Human Immunodeficiency Virus (HIV); performance standards.

The local health department shall maintain a program designed to minimize the incidence of STDs and HIV. The program shall include, at a minimum, activities to ensure:

(a) epidemiologic case finding, timely disease surveillance and reporting, in accordance with Part 2 of this Title;

(b) availability of accessible laboratory testing for STDs and HIV;

(c) provision of adequate facilities for diagnosis and treatment of STDs, directly or by contract, pursuant to Article 23 of the Public Health Law;

(d) provision of partner notification and referral services for priority patients, as determined in an investigation undertaken pursuant to 10 NYCRR 2.6;

(e) provision of prophylactic treatment to exposed partners for STDs;

(f) information, referral and assistance in utilizing appropriate community service programs;

(g) public health marketing and communication, including developing or adapting public education materials or campaigns, and promoting and disseminating such materials and campaigns, to promote healthy behaviors and reduce risk factors associated with STDs, HIV and related health disparities; and

(h) distribution of at least one communication per year to health care providers, clinics and laboratories on local and regional morbidity rates, CDC guidelines, diagnostic and treatment modalities and Department reporting requirements for STDs and HIV.

40-2.21 Tuberculosis; performance standards.

The local health department shall maintain a program designed to minimize the incidence of tuberculosis. The program shall include, at a minimum, activities to ensure:

(a) timely tuberculosis surveillance and reporting;

(b) detection and follow-up with individuals identified as infected with tuberculosis, including contact investigations performed in close collaboration with healthcare facilities, schools, workplaces, and other settings;

(c) provision of clinical services for tuberculosis disease or infection, either directly, through referral, or by contract;

(d) provision, or activities to ensure provision, of directly observed therapy for persons with tuberculosis, regardless of whether the local health department is the primary medical provider; and

(e) distribution of at least one communication per year to healthcare providers, clinics and laboratories regarding local and regional morbidity rates, CDC guidelines, diagnostic and treatment modalities, and Department reporting requirements for tuberculosis.

40-2.22 Communicable disease control; performance standards.

The local health department shall maintain a program designed to minimize the incidence of communicable disease. The program shall include, at a minimum, activities to ensure:

(a) compliance with disease specific protocols, as established by the Department or, for New York City, the Department of Health and Mental Hygiene, for:

(1) disease surveillance;

(2) timely disease investigation;

(3) reporting of diseases to the commissioner, pursuant to Part 2 of this Title;

(b) verification and diagnosis of infections in a timely manner, ascertainment of the sources of infections, and follow up with infected persons as needed;

(c) minimization of the spread of disease, through the identification and, when appropriate, prophylaxis of persons possibly exposed to disease;

(d) performance of multiple, simultaneous investigations of communicable diseases, and maintenance of capacity to do so; and

(e) distribution of at least one communication per year to healthcare providers, clinics and laboratories regarding local and regional morbidity rates, CDC guidelines, diagnostic and treatment modalities, and Department reporting requirements for reportable diseases.

40-2.23 Immunization; performance standards.

The local health department shall maintain a program designed to minimize the occurrence and transmission of vaccine-preventable diseases. The program shall include, at a minimum, activities to ensure:

(a) compliance with all statutes and regulations concerning immunization applicable to local health departments, including but not limited to:

(1) Public Health Law § 613, concerning programs of immunization for children;

(2) Public Health Law § 2164, concerning vaccination of school children against certain diseases;

(3) Public Health Law § 2165, concerning vaccination of post-secondary students against certain diseases;

(4) Public Health Law § 2168 concerning the New York Statewide Immunization Information System (NYSIIS);

(5) Subpart 69-3 of this Title, concerning pregnant women, testing for Hepatitis B, and follow-up care;

(b) disease surveillance for vaccine preventable diseases, in accordance with Part 2 of this Title;

(c) assistance with and follow-up on school immunization surveys;

(d) educational efforts in the community, including:

(1) collaboration and communication with healthcare providers and schools to maintain required immunization levels in schools; and

(2) public health marketing and communication, including developing or adapting public education materials or campaigns, and promoting and disseminating such materials or campaigns, to increase awareness of diseases and the control measures required to prevent the spread of disease;

(e) coordination with medical providers and laboratories to encourage and advise them to conduct recommended diagnostic testing in the event of a disease outbreak; and

(f) engagement in quality assurance activities with providers in the community to improve immunization practices, including but not limited to, improving compliance with the NYSIIS reporting requirements, as applicable.

CHRONIC DISEASE PREVENTION

40-2.30 Chronic disease prevention; performance standards.

(a) The local health department shall maintain a program designed to reduce the prevalence or incidence of chronic diseases and conditions such as cancer, cardiovascular diseases, diabetes, asthma, arthritis and obesity, and the underlying risk factors of tobacco use, physical inactivity and poor nutrition. The activities required in this program shall include, at a minimum:

(1) Analysis and utilization of public health data and information to shape objectives and strategies related to chronic disease prevention. This analysis shall:

(i) use available data from the community health assessment and other local assessments;

(ii) identify communities and/or neighborhoods where the population is at increased risk of chronic diseases and conditions and underlying risk factors;

(iii) identify the specific local factors and available policies, practices, underlying risk factors, and interventions that influence chronic disease;

(2) leadership of, or participation in, efforts with multiple sectors in the community to improve social and physical environments to support healthy behaviors;

(3) public health marketing and communication, including developing or adapting public education materials or campaigns, and promoting or disseminating such materials or campaigns, to reduce risk factors for chronic disease morbidity, mortality and related health disparities; and

(4) activities to promote the delivery of early detection and guideline-concordant health care by health care providers.

(b) Any and all health care services for the screening or treatment of chronic diseases are ineligible for State Aid.

COMMUNITY HEALTH ASSESSMENT

40-2.40 Community health assessment; performance standards.

Local health departments shall work with community partners to conduct a Community Health Assessment ("Assessment") and a Community Health Improvement Plan ("Plan"). Together, the Assessment and Plan shall include, at a minimum:

(a) an analysis of secondary data and, where available, primary data on health status and demographics;

(b) a description of the demographics of the population of the jurisdiction served by the local health department,

(c) a description of the health issues of the population, the distribution of health issues, and the contributing causes of the health challenges based on the data analyzed,

(d) the identification of priority areas for health improvement based on valid criteria;

(e) a description of public health services in the community and other resources that can be mobilized to improve population health, particularly in the priority areas;

(f) improvement strategies and measurable objectives through which the municipality and its community partners will address areas for health improvement and performance targets that will be used to track progress toward improvement of public health outcomes;

(g) methods by which access to the reports is to be provided to interested stakeholders including hospitals, nursing homes, medical societies, libraries, schools, government facilities, or other agencies and other organizations; and

(h) a description of the community partners that participated in the development of the community health assessment and improvement plan and their roles in the plan.

ENVIRONMENTAL HEALTH

40-2.50 Public water supply protection; performance standards.

The local health department shall maintain a program that ensures public water systems are operated pursuant to the New York State Public Health Law, Part 5 of the State Sanitary Code (10 NYCRR Part 5), and applicable federal Safe Drinking Water Act (SDWA) requirements.

40-2.51 Environmental radiation protection; performance standards.

The local health department shall maintain a program to conduct environmental radiation surveillance activities, if the Department has authorized the local health department to conduct such a program. Such program shall, at a minimum, maintain appropriate equipment and supplies, ensure that personnel are properly trained, and collect environmental samples for radiological analysis.

40-2.52 Community environmental health and food protection; performance standards.

The local health department shall maintain a program that ensures that facilities operated pursuant to Parts 6, 7, 14, 15 and 17 of the State Sanitary Code comply with all relevant provisions of the State Sanitary Code and the Public Health Law.

40-2.53 Realty subdivisions; performance standards.

The local health department shall maintain a program for approving realty subdivisions and assuring construction is in accordance with approved plans; provided that this provision shall not apply to New York City. The program shall include, at a minimum:

(a) procedures for approval of all realty subdivisions in accordance with the Public Health Law, Environmental Conservation Law, Education Law, and applicable State regulations prior to the start of construction activities; and

(b) provisions for site evaluation and construction inspections as necessary to assure that approved plans are followed.

40-2.54 Individual water and sewage systems; performance standards.

The local health department shall, at a minimum, maintain a program for providing technical assistance to property owners regarding the installation, maintenance and operation of individual water supplies and individual sewage systems.

40-2.55 Public health nuisances; performance standards.

The local health department shall:

(a) respond to all reported nuisances which may affect public health and safety; and

(b) maintain a program, consistent with Part 8 of the State Sanitary Code, as applicable, for responding to public health nuisances and ensuring abatement of such public health nuisances; provided, however, that abatement, remediation, management in place or any action that removes the public health nuisance from a property or relocating persons exposed to public health nuisances shall not be eligible for State Aid.

40-2.56 Injury prevention and control; performance standards.

The local health department shall maintain a program designed to reduce morbidity and mortality associated with injuries, utilizing reasonably available data. The program shall include, at a minimum, development and implementation of education programs to inform the public and providers of measures to avoid intentional and unintentional injury.

40-2.57 Environmental health exposure investigation, assessment and response; performance standards.

The local health department shall maintain and conduct a program that includes, at a minimum:

(a) responding to reports of exposure to chemical and non-infectious biological hazards attributable to environmental and occupational settings. Such responses shall include, at a minimum, preliminary evaluation and exposure investigation; appropriate environmental, biological, clinical or epidemiological monitoring; appropriate public health interventions to reduce and/or eliminate exposures; public or professional information and education; and consultation and referral as needed; and

(b) maintaining a log of reported exposures and alleged health effects, including a timeline and description of the response provided.

40-2.58 Lead poisoning prevention; performance standards.

(a) The local health department shall maintain a lead poisoning prevention program, which shall include, at a minimum:

(1) activities to identify risk factors for childhood lead poisoning, including locations in the municipality where exposure of children to lead is likely;

(2) activities to educate the community as to the dangers of lead toxicity;

(3) for all children aged one and two years old, and other children at risk of exposure to lead, ensuring provision of:

(i) access to blood lead testing services;

(ii) appropriate case coordination; and

(iii) environmental intervention;

(4) reporting of pertinent blood lead testing information and follow up activities in a manner acceptable to the Commissioner, provided that this provision shall not be interpreted to limit the jurisdiction of the local health department to require additional reporting in accordance with local law.

(b) The cost of removal or covering lead paint or of relocating persons exposed to lead paint shall not be eligible for State Aid.

ENVIRONMENTAL HEALTH – ONLY WHERE AUTHORIZED

40-2.60 Authorized radioactive materials licensing and inspection program; performance standards.

Where a local health department has received authorization to maintain a radioactive materials licensing and inspection program pursuant to Part 16 of this Title, the municipality shall conduct such program consistent with that Part.

40-2.61 Authorized radiation-producing equipment inspection program; performance standards.

Where a local health department has been certified to maintain a radiation producing equipment inspection program pursuant to Part 16 of this Title, the municipality shall conduct such program consistent with that Part.

40-2.62 Authorized tanning facilities licensing and inspection program; performance standards.

Where a local health department's health officer has received authorization to act as a permit-issuing official for the licensing and inspection of tanning facilities pursuant to Subpart 72-1 of this Title, the municipality shall conduct such program consistent with that Subpart or, if applicable, local regulations issued pursuant to 10 NYCRR 72-1.2.

EMERGENCY PREPAREDNESS AND RESPONSE

40-2.70 Emergency preparedness and response; performance standards.

The local health department shall conduct a program designed to ensure readiness to respond to health emergencies, whether naturally occurring or deliberate, to protect the health of its residents. The program shall include at a minimum:

(a) development and maintenance of an All Hazards Health Emergency Preparedness and Response Plan;

(b) activities designed to maintain readiness to provide appropriate medical countermeasures to the public in response to an emergency;

(c) ensure training and health education to local health department staff, health care providers and the community on health emergency preparedness;

(d) participation and implementation of exercises and drills that include appropriate response partners; and

(e) responding to emergencies as described in the All Hazards Health Emergency Preparedness and Response Plan.

* * *

43-1.11 State aid for tuberculosis

(a) Expenses incurred by a local health official for health care services rendered to tuberculosis patients in accordance with the terms of this Subpart shall be eligible for State aid reimbursement.

(b) Such aid shall be provided to local health officials through the same procedures and at the same rate as State aid for general public health work, pursuant to Part [39] 40 of this Subchapter.

* * *

44.80 Claiming State aid

Counties with State aid applications approved in advance of implementation shall submit vouchers for vector surveillance and/or vector control activities through the same procedure and at the same rate as State aid for general public health work, pursuant to Part [39] 40 of this Title.

Regulatory Impact Statement

Statutory Authority:

Article 6 of the Public Health Law (PHL) sets forth the statutory framework for the Departments' State Aid program, which partially reimburses local health departments (LHDs) for eligible expenses related to specified public health services. PHL §§ 602(4), 603(1), and 619 authorize the commissioner to promulgate rules and regulations to effectuate the provisions of PHL Article 6. PHL § 619 specifies that such regulations shall include establishing standards of performance for core public health services and for monitoring performance, collecting data, and evaluating the provision of such services.

Legislative Objectives:

PHL Article 6 establishes a program that provides State Aid to LHDs to partially reimburse the cost of eligible public health services.

Needs and Benefits:

The administrative aspects of State Aid, including the application and payment mechanisms, are currently set forth in 10 NYCRR Part 39 and Subpart 40-1. The standards of performance for eligible public health services are set forth in Subpart 40-2. The objectives of these amendments is to conform these regulations to recent statutory changes to PHL Article 6; clarify, simplify, and reorganize all of the regulations; and to modernize certain regulations, including standards of performance for eligible public health services.

In 2013, the Legislature amended PHL Article 6 to simplify the State Aid application and payment process and to modernize the performance standards for State Aid eligibility. The State Aid regulations should be updated to conform to these statutory changes.

Additionally, the State Aid regulations require clarification, reorganization, and modernization. Over time, the regulations concerning the administrative aspects of applying for and receiving State Aid—10 NYCRR Part 39 and Subpart 40-1—have become overly complicated, and certain portions have become obsolete. After examining Part 39 and Subpart 40-1, the Department has determined that these regulations could be greatly simplified by repealing these sections in their entirety and issuing a new Subpart 40-1 with appropriate amendments. Because the relevant provisions of Part 39 would be incorporated into the proposed Subpart 40-1, Part 39 is not being reissued.

Likewise, over time, the standards of performance set forth in Subpart 40-2 have become overly complicated and outdated. These amendments repeal and reissue Subpart 40-2, with appropriate amendments.

Accordingly, this document outlines the proposed regulatory changes in three headings:

- Conformance Changes, for changes necessary to conform the regulations to the recent statutory changes to Article 6 of the PHL;
- Non-conformance Changes – Administrative, for changes to the administrative aspects of State Aid, currently set forth in Part 39 and Subpart 40-1, and now provided solely in Subpart 40-1; and

- Non-conformance changes – Standards of Performance, for changes to the performance standards for core public health services, set forth in Subpart 40-2.

Conformance Changes

In accordance with the 2013 changes to Article 6 of the Public Health Law (L. 2013, ch. 56 [Part E]), the proposed amendments eliminate all references to the Municipal Public Health Services Plan (MPHSP) and to the Fee and Revenue Plan. The State Aid base grant is increased from $550,000 or 55 cents per capita (whichever is greater), to $650,000 or 65 cents per capita (whichever is greater). Sections on fees and revenue are clarified to explicitly state that every LHD must make reasonable attempts to collect fees for public health services, and that they must bill for third party insurance reimbursement for clinic health services where available. The definition of "maintenance of effort"—i.e., the funding level at which an LHD must maintain services—and the calculation of the penalty for failing to comply, have been simplified.

Further, the sections describing the State Aid Application (SAA) have been updated to reflect that the SAA is now the document that the LHD must submit to be eligible for State Aid, rather than the SAA combined with the MPHSP. The sections describing the SAA's components are updated to reflect its new structure: an organizational chart and list of the number of employees providing public health services; a proposed budget; a description of how the LHD will provide public health services; an attestation by the chief executive officer of the municipality that sufficient funds have been appropriated to provide public health services; an attestation by the public health commissioner or

director that the LHD has exercised due diligence in reviewing the SAA and that the application seeks State Aid only for eligible public health services; a list of public health services provided by the LHD that are not eligible for State Aid; a projection of fees and revenues to be collected for public health services eligible for State Aid; and any other information or documents required by the commissioner.

The proposed changes also reflect statutory amendments that clarify that the commissioner of health or public health director of a LHD may serve as the head of a merged agency or multiple county agencies, if approved by the commissioner, or serve as the local commissioner of health or public health director of additional counties when authorized pursuant to section 351 of the PHL.

Finally, the list of required core public health services is updated to include: Family Health, Communicable Disease Control, Chronic Disease Prevention, Community Health Assessment, Environmental Health and Emergency Preparedness and Response. More specifically, Chronic Disease Prevention and Emergency Preparedness and Response are added as new core public health services. Health Education is removed as a core public health service, and its requirements incorporated into each of the remaining core services.

Non-conformance Changes – Administrative

10 NYCRR Part 39 (General Provisions Regarding the Payment of State Aid) is repealed, and those provisions that remain relevant are incorporated into Subpart 40-1 (General Provisions). Accordingly, Part 39 is not being reissued. In general, Subpart 40-1 is

rewritten so that it provides a clear and concise description of the administrative processes relating to State Aid. This includes many clarifications and updates.

For example, the list of public health services for which the LHD must charge a fee is updated. LHDs already collect fees for these services. Hence, these are not new fees.

The amendments update the regulations concerning reporting of revenue generated from public health services provided by the LHD, but which are not required for State Aid eligibility. The timing of claim submissions is revised, and proposed regulations explicitly state that claims must be submitted using the "cash basis" method of accounting. The proposed regulations specify that claims must be prepared in conformance with the federal publication: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Records supporting claims must be retained for six years.

Non-conformance changes – Standards of Performance

Subpart 40-2 is greatly simplified and modernized. First, the general standards establishing the conditions under which an LHD can contract for public health services are updated. A new provision clarifies the categories of clinic services that are eligible for State Aid. The list of activities that are ineligible for State Aid, formerly part of Subpart 40-1, is now provided in Subpart 40-2. The list is also reorganized and clarified.

The standards of performance for each of the core public health services have been updated as well. Currently, every public health service has associated "performance standards" and "requirements", which are listed in two separate regulatory sections. These amendments consolidate each pair of regulations into a single section.

In sections under the Family Health core services, several existing programs are consolidated into a single section. These changes focus LHDs on assessing family health needs, connecting families with needed services, and working with other health care providers in the community to address gaps in services. Also included is a new section listing Family Health activities eligible for State Aid, but not required as a condition of eligibility, including primary care services, prenatal services, public health home visits associated with eligible services, and reproductive health care and family planning services. The existing provisions concerning lead exposure are moved to the Environmental Health heading.

The eligibility requirements under the Communicable Disease Control core service are modernized. The proposed amendments would require LHDs to provide communications to health care providers, clinics and laboratories on decreasing the spread of communicable disease. The performance standards for HIV and STD services are consolidated and revised. The performance standards concerning Immunization, Tuberculosis, and General Communicable Disease Control are revised.

The eligibility requirements under the Chronic Disease Prevention core service are modernized. For example, the proposed regulations require LHDs to work with community partners to implement policies that support healthy behaviors. The regulations also clarify that direct patient care is not eligible for State Aid.

The eligibility requirements under the Community Health Assessment core service are updated to include a Community Health Improvement Plan. The Community Health Improvement Plan must describe the actions the LHD will take with its partners to address public health issues in the county.

The eligibility requirements for the Environmental Health core service are reorganized and streamlined for simplicity. Sections concerning those public health services that are a condition of State Aid eligibility, only if the Department has authorized the LHD to perform such services, are grouped together. This includes a new section pertaining to regulation of tanning facilities, for those LHDs authorized to regulate tanning facilities on behalf of the Department.

Finally, the regulations establish standards of performance for the new core service, Emergency Preparedness and Response. The activities in this section were previously considered components of existing core public health services, such as Environmental Health and Communicable Disease Control, but are now located in a single section.

Costs:

The Department does not expect the non-conformance amendments to result in any significant increased costs. The proposed regulations were developed with considerable input from the New York State Association of County Officials (NYSACHO), through numerous meetings. NYSACHO's feedback has been integrated throughout the regulations. NYSACHO has not indicated that these regulations, which aim to reduce administrative burdens on LHDs, will result in any significant increased costs.

Local Government Mandates:

The regulations governing the Department's State Aid program for public health work are not mandates on local governments. However, traditionally every LHD has applied for and received some amount of State Aid, and these regulations place eligibility conditions on those funds.

With respect to the amendments to the administrative regulations governing the State Aid program, overall these regulations represent a reduction in the administrative burden of applying for State Aid. Further, the amendments to the regulations governing the standards of performance for core public health services simplify program requirements and reflect current practices by the majority of LHDs.

Paperwork:

These regulations will decrease the paperwork required for State Aid eligibility because LHDs will no longer be required to submit a Municipal Public Health Services Plan or

Fee and Revenue Plan. Although the community health assessment now requires a Community Health Improvement Plan, other components of the community health assessment have been reduced.

Duplication:

No relevant rules or legal requirements of the Federal and State governments duplicate, overlap or conflict with this rule.

Alternatives:

Some of these amendments are required to conform the regulations to recent statutory changes to Article 6 of the PHL. With respect to the non-conformance regulations, the alternative would be to maintain regulations that are overly-complicated, obsolete, and inconsistent with current practice and with the national standards for local health departments established by the Public Health Accreditation Board.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

The regulations will become effective upon the publication of the Notice of Adoption in the State Register.

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Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect on Small Business and Local Governments:

Local government will benefit from the clarification of administrative requirements and from the elimination of documents which are currently required for State Aid eligibility, such as the Municipal Public Health Services Plan (MPHSP) and Fee and Revenue Plan. The proposed regulatory changes do not affect small businesses.

Compliance Requirements:

These regulations apply exclusively to local governments. Accordingly, please refer to the Regulatory Impact Statement for a description of compliance requirements.

Professional Services:

No additional professional services are required to comply with these regulations.

Capital Costs and Annual costs of Compliance:

The Department does not expect the non-conformance amendments to result in any significant increased costs. The proposed regulations were developed with considerable input from the New York State Association of County Officials (NYSACHO), through numerous meetings. NYSACHO has not indicated that these regulations, which aim to reduce administrative burdens on LHDs, will result in any significant increased costs.

Economic and Technology Feasibility:

The proposed regulatory changes will not impose any new technology requirements or costs, or otherwise pose feasibility concerns.

Minimizing Adverse Impact:

No adverse impacts have been identified.

Small Business and Local Government Input:

The changes in the current regulations have been reviewed with and had considerable input from NYSACHO, through numerous meetings. NYSACHO's feedback has been integrated throughout the regulations. The proposed regulation changes do not have any effect on small business.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement under the proposed regulation. This regulation creates no new penalty or sanction. Hence, no cure period is necessary.

Statement in Lieu of Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Statement in Lieu of 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.

ASSESSMENT OF PUBLIC COMMENT

The Department received comments from the New York State Association of County Health Officials (NYSACHO) and the New York City Department of Health and Mental Hygiene (DOHMH), during the public comment period ending September 9, 2014. A summary of the comments and the Department's responses are as follows:

NYSACHO

Comment:

The Department has proposed several policies in relation to the State Aid Application process that would increase the administrative burden on local health departments.

Response:

NYSACHO refers to certain administrative actions undertaken by the Department which it believes has caused increased burden and costs to LHDs. The policies or actions referred to are not required by the proposed regulations. The Department will consider these concerns during the development of the State Aid Application.

Comment:

Proposed section 40-1.61 eliminates a provision that would permit the Commissioner to annually distribute excess State Aid funds to the Local Health Departments (LHDs). NYSACHO requests that this language be reinstated.

Response:

The State Aid program partially reimburses LHDs for eligible expenses related to specified public health services. The provision in regulation related to disbursement of funds appropriated but not utilized for reimbursement has not been used for many years. The Department declines to reinstate it.

Comment:

Proposed section 40-2.3(a)(2) would deem ineligible for State Aid activities under the following category: "Activities carried out by any other agency. The cost of activities for which any other government agency has been given legal responsibility." NYSACHO commented that this language could be interpreted as prohibiting another county agency from providing public health services under the direct supervision of the local health official. The following revision was suggested: "The cost of activities for which any other government agency has been given legal responsibility and for which no legal responsibility otherwise exists for services provided under Public Health Law Article Six by local health departments."

Response:

Article 6 funding is only available to LHDs and cannot be used to reimburse activities carried out by another agency. Accordingly, this provision was not revised.

Comment:

There is a discrepancy in the language in two provisions regarding the ineligibility of certain chronic disease related activities. Specifically, section 40-2.3(b)(1)(9) includes the word “prevention”, whereas section 40-2.30(b) does not. NYSACHO recommends that the word “prevention” be removed from section 40-2.3(b)(1)(9).

Response:

The Department agrees that there is a discrepancy and has made this clarifying change.

Comment:

Proposed section 40-2.11, regarding Family Health services, is not clear as to the settings in which these services should be provided.

Response:

This section has been clarified to provide that the services listed in subdivisions (a), (c), (d) are to be provided in a clinic setting, whereas the services listed in subdivision (b) are public health home visits.

Comment:

Proposed section 40-2.70, relating to Emergency Preparedness and Response, should be amended to allow reimbursement for all emergency preparedness and response activities—not just those related to health emergency preparedness and response.

Response:

The Department intends that only health emergency and response activities are eligible for State Aid. Accordingly, this section was not revised.

DOHMH

Comment:

Section 40-2.22 (Communicable Disease Control)

The proposed section would require that LHDs maintain a program that complies with disease specific protocols, as established by the State Department of Health. DOHMH observed that New York City is statutorily exempt from much of Article 21 of the Public Health Law, which concerns communicable disease control, and that it has established its disease specific protocols pursuant to local regulation. DOHMH requested that this section be revised to provide that DOHMH may comply with its local requirements, rather than those established by the Department.

Response:

The Department agrees and has clarified this section to reflect DOHMH's status under Article 21 of the Public Health Law.

Comment:

Section 40-2.23 (Immunization)

The proposed section would require all LHDs to ensure "compliance with the NYSIIS reporting requirements." However, certain NYSIIS requirements do not apply to

DOHMH (see, e.g., Public Health Law § 2168 and 10 NYCRR 66-1.2). DOHMH requested that the provision be amended to reflect DOHMH's requirements with respect to NYSIIS reporting.

Response:

The Department agrees and has clarified this language to state that LHDs must improve compliance with NYSIIS reporting requirements "as applicable."

Comment:

Section 40-2.53 (Realty subdivisions)

The proposed section would require all LHDs to maintain a program for approving realty subdivisions and assuring construction is in accordance with approved plans. In New York City, however, this activity is performed by the Buildings Department and City Planning, rather than DOHMH. DOHMH requested that the provision be qualified to reflect this arrangement.

Response:

The Department agrees and has qualified the provision to reflect this arrangement, which is specific to New York City.

Comment:

Section 40-2.55 (Nuisances)

The proposed section would require all LHDs to maintain a program that complies with the public health nuisance provisions set forth in Part 8 of the State Sanitary Code. DOHMH observed that New York City is exempt from much of Article 13 of the Public Health Law, concerning nuisances, and that it responds to nuisances in accordance with local regulations. DOHMH requested that the reference to Part 8 be removed.

Response:

The State Sanitary Code applies to all LHDs. However, LHDs may adopt provisions that are at least as protective as the State Sanitary Code. Accordingly, this section was clarified by requiring that LHDs maintain a program that is consistent with Part 8, "as applicable." The Department does not interpret this regulation as requiring New York City to change its nuisance response activities. Nuisance abatement continues to be ineligible for State Aid.

Comment:

Section 40-2.58 (Lead Poisoning)

The proposed section provides that the local health department shall maintain a lead poisoning program that reports blood lead testing information in a manner acceptable to the State Commissioner of Health. DOHMH requested that this section be revised to clarify that it does not limit the jurisdiction of an LHD to require additional reporting in accordance with local law.

Response:

The intent of this provision in the proposed regulation was not to limit the jurisdiction of an LHD to require additional reporting in accordance with its own local law. The Department has clarified this section accordingly.

Comment:

Section 40-2.62 (Authorized Tanning Facilities)

The proposed section would require authorized LHDs to operate a tanning facility licensing and inspection consistent with 10 NYCRR Subpart 72-1. However, Subpart 72-1 allows the LHD to adopt local regulations that are at least as protective as the State regulations. DOHMH commented that this section should be clarified to reflect that, where the LHD has adopted such local regulations, it must comply with such regulations as a condition of State Aid eligibility.

Response:

The Department agrees and has clarified this section accordingly.