

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, Section 2.6 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

2.6 Investigations and Response Activities.

(a) Except where other procedures are specifically provided in law and consistent with any direction that the State Commissioner of Health may issue, every local health authority, either personally or through a qualified representative, shall, with all due speed [immediately] upon receiving a report of a case, suspected case, outbreak, or unusual disease[,], and as the circumstances may require, investigate the circumstances of such report at any and all public and private places in which the local health authority has reason to believe, based on epidemiological or other relevant information available, that such places are associated with such disease. Except as consistent with any direction that the State Commissioner of Health may issue, s[S]uch investigations and response activities shall[, consistent with any direction that the State Commissioner of Health may issue]:

\* \* \*

(6) With the training or assistance of the State Department of Health as necessary, examine the processes, structures, conditions, machines, apparatus, devices, equipment, records, and material within such places that may be relevant to the investigation of disease or condition;

\* \* \*

(c) Investigation Updates and Reports.

- (1) Upon request of the State Department of Health, the local health authority shall submit updates and reports on outbreak investigations to the State Department of Health. The content, timeframe, and manner of submission of such updates shall be determined by the State Department of Health in consultation with the local health authority.

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## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The statutory authority for the regulatory amendments to Part 2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 225 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC), subject to the approval of the Commissioner of Health (Commissioner), to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York. Additionally, section 2103 of the PHL requires all local health officers to report cases of communicable disease to the New York State Department of Health (the “Department”).

### **Legislative Objectives:**

The legislative objective of section 225 of the PHL is, in part, to protect the public health by authorizing the PHHPC, with the approval of the Commissioner, to amend the SSC to address public health issues related to communicable disease.

### **Needs and Benefits:**

These regulations update and clarify the Department’s authority as well as that of local health departments (LHDs) to take specific actions to monitor the spread of disease, including actions related to investigation and response for a disease outbreak.

Specifically, the proposed regulatory amendments would add language to clarify and make explicit that the Commissioner may issue guidance that impacts investigation and response activities. For example, guidance may be issued instructing LHDs to prioritize full

investigations of varicella cases to those known to involve congregate residential settings and conduct investigations of other varicella cases only to the extent that resources allow, or guidance may provide details about the extent of investigation for a case of chlamydia in a pregnant individual. Regarding the timing for when investigation must commence, the regulation would change “immediately” to “with all due speed” to account for the fact that there is a range of appropriate response times depending on the condition and situation. In addition, the regulation would add “as necessary” to the provision requiring the local health authority to examine various factors associated with places related to an investigation “with the training or assistance of the State Department of Health”, to acknowledge that local health authorities will not always need training or assistance. Finally, the regulation would add “in consultation with the local health authority” to the provision stating that the Department shall determine the content and other characteristics of investigation updates, to acknowledge that the local health authority can provide valuable input.

## **COSTS:**

### **Costs to Regulated Parties:**

Although there are costs associated with disease investigation and response for any outbreak, these amendments merely clarify the existing authorities and responsibilities of local governments. As such, these amendments do not impose any substantial additional costs beyond what LHDs would incur in the absence of these amendments.

Further, making explicit the Department’s authority to issue guidance that impacts investigation activities will result in a more appropriate allocation of resources, possibly resulting in a cost-savings for State and local governments by reducing unnecessary investigatory

activities and allowing resources to be focused on investigations likely to have the greatest public health impact.

**Costs to Local and State Governments:**

Although there are costs associated with disease investigation and response for any outbreak, these regulations merely clarify the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations.

Further, making explicit the Department’s authority to issue guidance that impacts investigation activities will result in a more appropriate allocation of resources, possibly resulting in a cost-savings for State and local governments.

**Paperwork:**

These amendments do not require any additional paperwork.

**Local Government Mandates:**

Under existing regulation, LHDs already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties.

**Duplication:**

There is no duplication in existing State or federal law.

**Alternatives:**

The alternative would be to leave in place the current regulations on disease investigation. However, these regulatory provisions clarify the regulation and provide additional flexibility to LHDs, while ensuring appropriate responses are taken for communicable disease outbreaks.

**Federal Standards:**

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within New York State.

**Compliance Schedule:**

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

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## **REGULATORY FLEXIBILITY ANALYSIS**

### **Effect on Small Business and Local Government:**

Under existing regulation, local health departments (LHDs) already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments merely clarify these existing authorities and duties.

### **Compliance Requirements:**

Under existing regulation, LHDs already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments merely clarify these existing authorities and duties.

### **Professional Services:**

It is not expected that any professional services will be needed to comply with this rule.

### **Compliance Costs:**

Although there are costs associated with disease investigation and response for any outbreak, these regulations merely clarify the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what LHDs would incur in the absence of these regulations being amended.

Further, making explicit the New York State Department of Health's ("the Department") authority to issue guidance that impacts investigation activities will result in a more appropriate allocation of resources, possibly resulting in a cost-savings for State and local governments.

**Economic and Technological Feasibility:**

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

**Minimizing Adverse Impact:**

As the proposed amendments clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with regulated entities to ensure they are aware of the new regulations and have the information necessary to comply.

**Small Business and Local Government Participation:**

These proposed amendments to the regulation were previously discussed with the New York State Association of Counties Health Officials (NYSACHO) on three occasions and participants included both NYSACHO and LHD representatives. Discussions involved a detailed review of each of the submitted comments to the prior amendments adopted effective December 20, 2023 and a proposed approach to prioritize the initial scope of the regulatory amendments to incorporate the requested flexibility to prioritize investigation and response efforts at the local level, which is reflective of current practice and supported by both the Department and NYSACHO. These proposed amendments to the regulation are being proposed for permanent adoption, so all parties will have an opportunity to provide comments during the notice and comment period.



## RURAL AREA FLEXIBILITY ANALYSIS

### Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population, ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 44 counties have a population of less than 200,000 based upon 2020

United States Census data:

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

The following 10 counties have populations of 200,000 or greater, and towns with population densities of 150 persons or fewer per square mile, based upon the United States Census estimated county populations for 2020:

Albany County  
Dutchess County  
Erie County

Monroe County  
Niagara County  
Oneida County  
Onondaga County

Orange County  
Saratoga County  
Suffolk County

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

As the proposed regulations clarify existing responsibilities and duties among regulated entities and individuals, no additional recordkeeping, compliance requirements, or professional services are expected.

**Compliance Costs:**

As the proposed regulations clarify existing responsibility and duties among regulated entities and individuals, no initial or annual capital costs of compliance are expected above and beyond the cost of compliance for the requirements currently in 10 NYCRR Part 2.

**Minimizing Adverse Impact:**

As the proposed amendments to the regulations clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with local health departments (LHDs) to ensure they are aware of the new regulations and have the information necessary to comply.

**Rural Area Participation:**

These proposed amendments to the regulations are being proposed for permanent adoption, so all parties will have an opportunity to provide comments during the notice and comment period.

## **JOB IMPACT STATEMENT**

The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.