wildlife management tools, including hunting. Periodically, the department adjusts its hunting regulations in response to changes in hunting technology. By doing so, wildlife management tools are kept up to date.

3. Needs and benefits:

The department proposes to allow the use of air powered firearms or guns for use in hunting big game. The popularity of these firearms is growing, largely because of technological advancements. These modern firearms are sophisticated and efficient at harvesting big game species.

Environmental Conservation Law section 11-0901 states that small game may only be taken with a longbow or gun. However, a "gun" is not defined in the ECL or in 6 NYCRR section 180.3 ("Definition of Firearms") so hunters do not have clear legal guidance allowing the use of air-powered firearms. The department proposes adding language to 6 NYCRR section 180.3 to allow the use of air-powered firearms for hunting big game by defining the term "big bore air rifle." The Department previously (2010) amended this regulation to clearly allow the use of air-powered firearms for hunting small game.

Air-powered firearms are powered in one of three ways: (1) CO2 cartridges; (2) spring or lever-action to compress air in an internal cylinder; (3) a pneumatic pump to compress air in an internal cylinder. Air-powered firearms designed for big game ("big bore air rifles") are available commercially, and they fire bullets that are 0.30 inches (0.30 caliber) or larger in diameter at sufficient velocities to safely and efficiently harvest big game at ranges of about 100 yards or less. The Department proposes a clear definition of "big bore air rifle" that must produce projectile velocities of not less than 650 feet per second, and fire projectiles that are no smaller than 0.30 inches (0.30 caliber) in diameter. This technical requirement will ensure that big bore air rifles have adequate downrange energy to effectively harvest New York big game species at commonly encountered ranges (100 yards and less).

Because big bore air rifles are not as loud as a conventional rifle or shotgun, it is possible that allowing their use may make it more acceptable to use them in locations with higher human densities than New York's rural countryside. Since a big bore air rifle is about as loud as a 0.22 caliber rimfire, it could enhance the ability of hunters to take deer where they are overabundant. By defining and allowing the use of big bore air rifles for hunting big game, New York hunters will have a modest increase in hunting opportunity. Also, with the growth in popularity of these firearms reflected in increased production by manufacturers, there could also be a modest increase in economic activity associated with this proposed change in New York's hunting regulations.

4. Costs:

None, beyond normal administrative costs.

5. Local government mandates:

There are no local governmental mandates associated with this proposed regulation.

6. Paperwork:

No additional paperwork is associated with this proposed regulation.

7. Duplication:

There are no other regulations similar to this proposal.

8. Alternatives:

The only alternative considered was the "no action" alternative. However, the Department decided that an expansion of the use of air-powered firearms would provide a modest amount of additional opportunity for big game hunters.

9. Federal standards:

There are no federal standards pertaining to the use of air-powered firearms.

10. Compliance schedule:

Hunters will be able to comply with this regulation upon adoption during the 2015-2016 hunting season.

Regulatory Flexibility Analysis

The proposed regulation has no effect on small businesses or local governments. It simply clarifies that air-powered firearms or guns may be used for big game hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not needed.

Rural Area Flexibility Analysis

The proposed regulation has no effect on rural areas. It simply clarifies that air-powered firearms or guns may be used for big game hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not needed.

Job Impact Statement

The proposed regulation does not affect jobs. It simply clarifies that air-powered firearms or guns may be used for big game hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Job Impact Statement is not needed.

Department of Health

NOTICE OF ADOPTION

Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP)

I.D. No. HLT-36-14-00012-A
Filing No. 1028
Filing Date: 2015-12-02
Effective Date: 2015-12-23

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

Action taken: Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); and Social Services Law, sections 363-a(2), 365-a(2)(e) and 365-f

Subject: Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP).

Purpose: To establish definitions, criteria and requirements associated with the provision of continuous PC and continuous CDPA services.

Substance of final rule: The proposed regulations conform the Department's personal care services regulations at 18 NYCRR § 505.14 to State law [Social Services Law ("SSL") § 365-a(2)(e)(iv)], which caps social services districts' authorizations for nutritional and environmental support functions, commonly referred to as housekeeping or Level I functions, to no more than eight hours per week for those Medical Assistance ("Medicaid") recipients who need only that level of care. The proposed regulations also revise the criteria for social services districts' authorizations of continuous personal care services (i.e. "split-shift" services) and live-in 24-hour personal care services consistent with the preliminary injunction decision in Strouchler v. Shah, 891 F.Supp. 2d 504 (S.D.N.Y. 2012).

In subdivision 505.14(a), which contains definitions and provisions relating to the scope of personal care services, the definitions of "some assistance," "total assistance," and "continuous 24-hour personal care services" are repealed. Definitions of "continuous personal care services" and "live-in 24-hour personal care services" are added. Also added is a provision that personal care services shall not be authorized to the extent that the patient's need for assistance can be met by voluntary assistance from informal caregivers, by formal services other than the Medicaid program, or by adaptive or specialized equipment or supplies that can be provided safely and cost-effectively.

With regard to nutritional and environmental support functions ("Level I" services), a provision is added limiting the authorization to no more than eight hours per week, consistent with SSL § 365-a(2)(e)(iv). The list of Level II personal care functions is amended by the addition of "turning and positioning."

In paragraph 505.14(b)(3), which specifies factors that the nursing assessment must include, the nursing assessment must include an evaluation whether adaptive or specialized equipment or supplies can meet the patient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively. The nursing assessment would no longer be required to include an evaluation of the degree of assistance required for each function or task, since the definitions of "some assistance" and "total assistance" are repealed.

In paragraph 505.14(b)(4), which specifies the circumstances under which the local professional director must conduct an independent medical review, such reviews would have to be conducted in cases involving live-in 24-hour personal care services as well as cases involving continuous personal care services. The nursing assessment in continuous personal care services and live-in 24-hour personal care services cases would have to document certain factors, such as whether the physician's order had documented a medical condition that causes the patient to need frequent assistance during a calendar day with toileting, walking, transferring, turning and positioning, or feeding.

The social assessment in live-in 24-hour personal care services cases would have to evaluate whether the patient's home has sleeping accommodations for a personal care aide. If not, the district must authorize continuous personal care services; however, should the patient's circumstances change and sleeping accommodations for a personal care aide

become available in the patient's home, the district must promptly review the case. If a reduction of the patient's continuous personal care services to live-in 24-hour personal care services is appropriate, the district must send the patient a timely and adequate notice of the proposed reduction.

In continuous personal care services and live-in 24-hour personal care services cases, the local professional director could consult with the patient's treating physician and conduct an additional assessment in the home. The final determination regarding the amount of care to be authorized would have to be made with reasonable promptness, generally not to exceed seven business days after receipt of required documentation.

In subparagraph 505.14(b)(5)(v), the provisions governing social services districts' notices to recipients for whom districts have determined to deny, reduce or discontinue personal care services are revised and reorganized.

The proposed regulations make conforming changes to the Department's regulations governing the consumer directed personal assistance program ("CDPAP"), which are at 18 NYCRR § 505.28.

In subdivision 505.28(b), which contains definitions relating to the CDPAP, the definitions of "continuous 24-hour consumer directed personal assistance" "some assistance" and "total assistance" are repealed. The definition of "consumer directed personal assistance" is amended to delete references to "some or total" assistance. Definitions of "continuous consumer directed personal assistance" and "live-in 24-hour consumer directed personal assistance" are added.

The definition of "personal care services" is amended to provide that, for individuals whose needs are limited to nutritional and environmental support functions (i.e. housekeeping tasks), personal care services shall not exceed eight hours per week.

In paragraph 505.28(d)(2), which specifies factors that the social assessment must include, the social assessment in continuous consumer directed personal assistance and live-in 24-hour consumer directed personal assistance cases must document that all alternative arrangements for meeting the individual's medical needs have been explored and are infeasible. The social assessment for live-in 24-hour cases must evaluate whether the consumer's home has sleeping accommodations for a consumer directed personal assistant. If not, the district must authorize continuous consumer directed personal assistance; however, if the consumer's circumstances change and sleeping accommodations for a consumer directed personal assistant become available in the consumer's home, the district must promptly review the case. If a reduction of the consumer's continuous services to live-in services is appropriate, the district must send the consumer a timely and adequate notice of the proposed reduction.

In paragraph 505.28(d)(3), which specifies factors that the nursing assessment must include, the nursing assessment in continuous consumer directed personal assistance cases and live-in 24-hour consumer directed personal assistance cases would have to document certain factors, such as whether the physician's order has documented a medical condition that causes the consumer to need frequent assistance during a calendar day with toileting, walking, transferring, turning and positioning, feeding, home health aide services, or skilled nursing tasks.

Paragraph 505.28(d)(5), which specifies requirements for the local professional director's review, is repealed and a new paragraph 505.28(d)(5) is added. Cases involving continuous consumer directed personal assistance and live-in 24-hour consumer directed personal assistance would have to be referred to the local professional director or designee for review and final determination of the amount of services to be authorized. The local professional director or designee would be required to consider information in the social and nursing assessments and may consult with the consumer's treating physician and conduct an additional assessment in the home. The final determination of the amount of care to be authorized must be made with reasonable promptness, generally not to exceed seven business days after receipt of all information.

Subdivision 505.28(e), which pertains to the authorization process, would be amended to provide that consumer directed personal assistance shall not be authorized to the extent that a consumer's need for assistance can be met by voluntary assistance from informal caregivers, by formal services other than the Medicaid program, or by adaptive or specialized equipment or supplies when such equipment or supplies can be provided safely and cost-effectively.

Paragraph 505.28(h)(5) would be amended to provide additional detail regarding the content of social services district notices when the district denies, reduces or discontinues consumer directed personal assistance.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 505.14(a)(2), (4), (b)(3), (4), 505.28(b)(4), (12), (d)(3) and (e)(1).

Revised rule making(s) were previously published in the State Register on September 16, 2015.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The Department received comments from the following: counsel for the plaintiff class in Strouchler v. Shah (Cardozo Bet Tzedek Legal Services, JASA/Legal Services for the Elderly in Queens, and New York Legal Assistance Group) and the law firm of Hinman Straub, on behalf of a managed care plan.

1. Comment: Both commentators asked that the Department clarify the extent to which 18 NYCRR §§ 505.14, personal care services, and 505.28, consumer directed personal assistance program ("CDPAP"), apply to services provided by Medicaid managed care organizations and Medicaid managed long term care plans.

Response: The Department has not revised the proposed regulations in response to the comments. The revisions the commentators suggest would require that substantive revisions be made to the proposed regulations, necessitating the filing of yet another notice of revised rule making for an additional minimum public comment period of 30 days. This would delay the final adoption of regulations necessary to comply with the stipulation of settlement in Strouchler v. Shah. The Department is nonetheless considering how best to address these comments, whether by a future notice of proposed rule making or by other means.

2. Comment: Counsel for the Strouchler class commented that the proposed regulations must require that a live-in 24-hour personal care aide be able to obtain a total of eight hours of sleep with at least one five hour period of uninterrupted sleep.

Response: Counsel had suggested similar revisions in their comments on the proposed regulations published on September 10, 2014. In response to those earlier comments, the Department revised the proposed definitions of continuous personal care services and live-in 24-hour personal care services. As discussed in the Assessment of Public Comment published on September 16, 2015, these proposed revisions clarify that a live-in 24-hour aide's "five hours daily of uninterrupted sleep" is within an eight hour period. This is consistent with State Department of Labor guidance, which requires that live-in aides have an eight hour sleep period and actually receive five hours of uninterrupted sleep. In view of the renewed comment on this point, however, the Department has revised the proposed regulations once again to clarify that this five hour period of uninterrupted sleep is during the aide's eight hour period of sleep. Similar revisions were made to Section 505.28 governing the CDPAP.

3. Comment: Counsel for the Strouchler class commented that the purpose of the requirement to consider whether the Medicaid recipient could be "safely left alone without care for a period of one or more hours in a calendar day" should be clarified to avoid improper denials of services. They commented that such a provision, without some clarification of the legitimate regulatory purpose, could be used to deny care to individuals with dementia who have a documented need for live-in home care services.

Response: Counsel offered similar comments in response to the proposed regulations published on September 10, 2014. At that time, the Department declined to revise the proposed regulations in response to the comment. In its Assessment of Public Comment published on September 16, 2015, the Department noted that this provision, although relocated in the proposed regulations, was not new. The Department's regulations had long provided that, when the individual providing personal care services is living in the home of the patient, the social services district must determine whether or not, based on the social and nursing assessments, the patient can be safely left alone without care for a period of one or more hours per day.

In considering the renewed public comments, however, the Department determined that this provision should be deleted. It is an anachronism, a remnant of a past practice, no longer followed, under which social services districts negotiated reimbursement rates for personal care services, including determining the number of hours of services for which a live-in aide would be paid. The Department of Labor, not social services districts, now determines the number of hours for which live-in aides must be paid. Accordingly, the revised regulations would repeal this provision as obsolete.

4. Comment: Counsel for the Strouchler class commented that the regulations must clarify that only voluntary assistance from informal caregivers may be considered and that informal caregivers cannot be compelled to assist with activities of daily living or similar tasks.

Response: The Department has not revised the proposed regulations in response to the comments. The proposed regulations address this concern, providing in no fewer than six provisions that the assistance of informal caregivers, such as family members and friends, must be voluntary. Specifically, the following provisions of the proposed personal care ser-

vices regulations require that the assistance of informal caregivers be voluntary: Sections 505.14(a)(3)(iii)(a)(1), 505.14(a)(3)(iii)(b), and 505.14(b)(4)(i)(c)(1). Similarly, the following provisions of the proposed CDPAP regulations require the same: Sections 505.28(d)(2)(iv), 505.28(e)(1)(ii)(a), and 505.28(e)(1)(iii). No further regulatory recitations of this requirement are needed.

NOTICE OF ADOPTION

Patient Access of Laboratory Test Results

I.D. No. HLT-24-15-00006-A

Filing No. 1032

Filing Date: 2015-12-07

Effective Date: 2015-12-23

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

Action taken: Amendment of Parts 34 and 58 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 576 and 587

Subject: Patient Access of Laboratory Test Results.

Purpose: To give patients a right to access medical records directly from clinical, including completed lab. test reports.

Text or summary was published in the June 17, 2015 issue of the Register, I.D. No. HLT-24-15-00006-P.

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

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

Assessment of Public Comment

Comment:

One comment generally supported the right of patients to access patient information but also expressed reservations about clinical laboratory test results being immediately available to patients prior to being seen or signed off by the ordering physician. The commenter thought this could be detrimental when the testing was for difficult or life-threatening diagnoses. The commenter asks that wording be included in the regulation to allow the physician who ordered the testing the opportunity to review the results prior to the patient having access to them. This would give the doctor the ability to speak to the patient and clarify what the test results mean before the patient sees the report.

Response:

The Federal Department of Health and Human Services (HHS) addressed this concern in responses to public comments received on the newly adopted federal rule. HHS emphasized that the rule does not alter the role of the ordering or treating provider in reporting and explaining test results to patients. HHS expects that patients will continue to obtain test results and advice about what those test results mean through their ordering or treating providers.

HHS also noted that under 45 CFR § 164.524(b)(2)(i), laboratories are not required to provide individuals with access to their laboratory test reports immediately; laboratories can wait up to 30 days. HHS believes 30 days is generally sufficient to allow the ordering or treating provider to receive the test report in advance of the patient's receipt of the report, and to communicate the result to the patient, and counsel the patient as necessary with regard to the result. HHS emphasized that laboratories will not be responsible for providing interpretations of laboratory test results to patients.

Comment:

A comment requested information regarding how the proposed rule would be implemented given the requirements in PHL § 2781(5) for persons ordering HIV related tests to communicate test results to the subject of the test.

Response:

This regulation will have no effect on such requirements. Persons ordering HIV related tests will continue to be required to comply with PHL § 2781(5) in exactly the same manner.

Comment:

Some commenters requested that language be removed from 10 NYCRR § 34-2.11 that requires a clinical laboratory to direct patient inquiries regarding the meaning or interpretation of the test results to the referring health services purveyor, because this language prohibits a clinical laboratory pathologist from conferring with a patient on the interpretation of laboratory/pathology test results.

Response:

Removal of the language in 10 NYCRR § 34-2.11 is not consistent with the Department's goal of aligning its regulations with the federal requirements. Additionally, the requirement that a clinical laboratory direct patient inquiries regarding the meaning or interpretation of the test results to the referring health services purveyor applies to all clinical laboratory directors, including those individuals who are not pathologists. The Department of Health is planning on meeting with stakeholder groups to obtain additional feedback on conferrals between pathologists and patients.

Comment:

One comment generally supported the right of patients to access patient information but requested that language be removed from 10 NYCRR § 34-2.11 that requires a clinical laboratory to advise a patient that test results have already been, or are simultaneously being, communicated to the referring health services purveyor. The commenter stated that the current regulations would require a clinical lab to make customized statements on their reports for NYS patients indicating that that the provider has, or is receiving, results. This additional language on reports issued to NYS patients would be administratively burdensome and costly due to the need for additional programming of their reporting systems. They also stated that these requirements are of no therapeutic benefit to the patient.

Response:

The Department does not believe it is necessary to change the regulation as it does not specifically require that a statement be made on a patient report.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

General Provisions Concerning State Aid Eligibility

I.D. No. HLT-51-15-00001-P

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

Proposed Action: This is a consensus rule making to amend section 40-2.1 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 619

Subject: General Provisions Concerning State Aid Eligibility.

Purpose: To clarify that rent and maintenance of space in lieu of rent (MILOR) remain eligible for State Aid.

Text of proposed rule: Section 40-2.1 is amended by adding a new subdivision (c), as follows:

(c) The following costs related to the facility space used by the local health department are eligible for State Aid:

(1) Rent paid to a person, a private entity, or a public entity other than the municipality that operates the local health department.

(2) For space owned by the municipality that operates the local health department, the cost of maintenance of space in lieu of rent (MILOR).

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

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

Public comment will be received until: 45 days after publication of this notice.

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

Consensus Rule Making Determination

Statutory Authority:

The Commissioner of Health is authorized by Section 619 of the Public Health Law (PHL) to promulgate rules and regulations to effectuate the provisions and purposes of the State Aid program.

Basis:

The proposed amendment to Subpart 40-2 will clarify that rent and maintenance of space in lieu of rent (MILOR) remain eligible for State Aid.

The former 10 NYCRR 40-1.52 (g) and (h) explicitly provided that rent and MILOR were eligible for State Aid. However, the substance of these former provisions was inadvertently omitted when the Department repealed Subpart 40-2 and issued completely revised State Aid regulations, effective December 31, 2014. It was the Department's intent that rent and MILOR remain eligible for State Aid under the revised regulations.

Several local health departments have requested reinstatement of the former provisions. Accordingly, the Department does not anticipate any objection to this clarifying amendment.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedures Act. It is apparent, from the nature of the