

Substance of proposed rule: The Long Island Power Authority (“LIPA”) Staff (“Staff”) proposes to modify LIPA’s Tariff for Electric Service (the “Tariff”) effective January 1, 2023, to enhance LIPA’s Long Island Choice Program (“Long Island Choice”). This proposal will create a Merchant Function Charge, applicable to all customers receiving supply from LIPA—and not applicable to retail choice customers—and establish the purchase of receivables rate for energy service companies (“ESCOs”) that participate in Long Island Choice and utilize the Consolidated Bill Option with Purchase of Receivables.

By increasing the portion of the customer bill that is subject to competition and allowing ESCOs to utilize the utility’s existing billing and collection services (resulting in lower ESCO costs), the Merchant Function Charge and the Consolidated Bill Option with Purchase of Receivables advance LIPA’s ongoing effort to eliminate barriers in the retail choice market.

Text of proposed rule and any required statements and analyses may be obtained from: Elisa Rodriguez, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: tariffchanges@lipower.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Bill Credits and Food and Medicine Spoilage Reimbursements During Widespread Prolonged Outages

I.D. No. LPA-37-22-00016-P

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

Proposed Action: The Long Island Power Authority proposes to modify its Tariff for Electric Service to adopt policies concerning bill credits and food and medicine spoilage reimbursements during widespread prolonged outages.

Statutory authority: Public Authorities Law, section 1020-f(u) and (z)

Subject: Bill credits and food and medicine spoilage reimbursements during widespread prolonged outages.

Purpose: To provide relief to customers who experience prolonged outages.

Public hearing(s) will be held at: 2:00 p.m., Nov. 16, 2022 at 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553; and 10:00 a.m., Nov. 17, 2022 at 100 Veterans Memorial Hwy., Hauppauge, New York 11788 or Refer to schedules on: www.lipower.org

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Long Island Power Authority (“LIPA”) or the “Authority”) Staff (“Staff”) proposes to modify LIPA’s Tariff for Electric Service (the “Tariff”) effective January 1, 2023, to adopt policies concerning bill credits and food and medicine spoilage reimbursements for residential and small business customers following widespread prolonged outages, so that customers are provided with prolonged outage credits and reimbursements on the same terms as customers of New York’s investor-owned utilities.

Text of proposed rule and any required statements and analyses may be obtained from: Elisa Rodriguez, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: tariffchanges@lipower.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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

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Office of Mental Health

EMERGENCY RULE MAKING

Covid-19 Masking Program

I.D. No. OMH-40-21-00007-E

Filing No. 676

Filing Date: 2022-08-26

Effective Date: 2022-08-26

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

Action taken: Addition of Part 556 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

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

Specific reasons underlying the finding of necessity: The immediate adoption of this rule is necessary for the preservation of health, safety, and welfare.

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. According to Johns Hopkins’ Coronavirus Resource Center, as of July 14, 2021, there have been over 188 million cases and over 4 million deaths worldwide, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions. Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York’s facilities, it is imperative that these facilities facilitate the appropriate masking of their staff. Based on the foregoing, the Office has made the determination that this emergency regulation is necessary to best protect the residents of New York’s facilities.

For all of the reasons outlined above, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Covid-19 Masking Program.

Purpose: To implement Covid-19 Mask Program.

Text of emergency rule: A new Part 556 titled COVID-19 Mask Requirement, is added to read as follows:

556.1 Background and Intent.

(a) COVID-19 is an unpredictable disease that can cause serious illnesses and death. In response to this increased public health threat, New York must take active steps to prevent and control transmission of COVID-19. The seriousness of the continuing threat and the failure to achieve acceptable vaccination rates through voluntary programs necessitate further action.

556.2 Legal Base.

(a) Section 7.07 of the Mental Hygiene Law charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

(b) Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under the Commissioner’s jurisdiction.

(c) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of Article 31 of the Mental Hygiene Law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

556.3 Applicability.

(a) This Part applies to:

(1) any provider of services which operates or proposes to operate a facility, or a residential program licensed, certified, designated or funded by the Office of Mental Health;

(2) hospitals, facilities, corrections-based programs, and residential programs operated by the Office of Mental Health.

556.4 Definitions Pertaining to this Part.

(a) Facility shall mean:

- (1) a Hospital as defined hereinafter;
- (2) a provider of services which operates or proposes to operate a congregate residential program licensed, certified, or funded by the Office of Mental Health; or
- (3) an out-patient program licensed, certified, designated or funded by the Office of Mental Health.

(b) Hospital shall mean a hospital named in Mental Hygiene Law section 7.17(b), or operated pursuant to Parts 580, 582, or 590 of this Title, and any provider of services co-located within such hospital campus.

(c) Staff shall mean all persons employed or affiliated with a Facility, whether paid or unpaid, including but not limited to employees, corrections-based staff, members of the medical, nursing, and other treatment staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19 they could potentially expose patients to the disease.

556.5 Requirements for All Facilities.

(a) Effective immediately, all Programs shall have policies and procedures in place to ensure all staff, visitors and individuals receiving services regardless of vaccination status wear appropriate masks, consistent with any infection control guidance issued by this Office.

(b) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, all Hospital and Facility staff, contractors, vendors, visitors, patients, residents, clients, and all other individuals who enter the indoor premises of such Hospital or Facility, must wear masks at all times regardless of vaccination status, except when alone in an office or room, or actively eating or drinking.

(c) For purposes of this section face-coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth.

(d) Face coverings are not required to be worn by:

- (1) children under two years of age;
- (2) a person with a disability who cannot wear a mask, or cannot safely wear a mask, for reasons related to the disability; or
- (3) a person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by an Occupational Health and Safety Administration workplace risk assessment.

556.6 Enforcement.

(a) The Office will enforce the provisions of this Part pursuant to its oversight authority in Mental Hygiene Law Articles 7 and 31.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. OMH-40-21-00007-EP, Issue of October 6, 2021. The emergency rule will expire October 24, 2022.

Text of rule and any required statements and analyses may be obtained from: Sara Paupini, Esq., Office of Mental Health, 44 Holland Avenue, Albany, New York 12229, (518) 474-1331, email: regs@omh.ny.gov

Regulatory Impact Statement

(1) Statutory Authority:

(a) Section 7.07 of the Mental Hygiene Law (MHL) charges the Office of Mental Health (OMH) with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

(b) Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under their jurisdiction.

(c) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of article 31 of such law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

(2) Legislative Objectives:

To implement a COVID-19 mask program through MHL §§ 7.07, 7.09 and 31.04 which provide the Commissioner of Mental Health with the authority to protect the health and life of the people of the State of New York including by controlling the spread of communicable diseases. COVID-19 is an unpredictable disease that can cause serious illnesses and death. In response to this increased public health threat, New York must take active steps to prevent and control transmission of COVID-19. The seriousness of the continuing threat and the failure to achieve acceptable vaccination rates through voluntary programs necessitate further action. Collectively, the legislative purpose of these statutes is to protect the residents of New York's mental health facilities by providing safe, efficient, and adequate care.

(3) Needs and Benefits:

These regulations are necessary to prevent the spread of COVID-19 in facilities licensed, certified, funded and operated by the Office of Mental

Health and to help ensure the health and life of residents of these facilities. This requirement will help reduce the spread of COVID-19 and ensure residents are less likely to suffer a COVID-related death or severe illness.

COVID-19 is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. Given the disproportionate adverse health impacts of COVID-19 for adults and those with comorbidities, many of whom receive treatment in New York's facilities, it is imperative that all steps are taken, including wearing masks, to prevent the spread of the disease.

Based on the foregoing, the Office has made the determination that this emergency regulation is necessary to best protect the residents of the Office of Mental Health's licensed and operated facilities.

4. Costs:

(a) Costs to Regulated Parties:

The purpose of this regulation is to require licensed and operated OMH facilities to promptly coordinate the COVID-19 masking of their residents and personnel. Costs are expected to be minimal.

(b) Costs to Local and State Governments:

This regulation will not have a significant impact on local or State governments unless they operate an OMH licensed facility or hospital in which case costs will be the same as costs for private entities. There may be limited additional agency costs for administrative oversight.

5. Local Government Mandates:

Hospitals and residences operated by local governments will be affected and will be subject to the same requirements as any other hospital licensed under Article 31.

6. Paperwork:

This regulation imposes no additional paperwork.

7. Duplication:

These regulatory amendments do not duplicate existing State or Federal requirements.

8. Alternatives:

The Office believes that the promulgation of this regulation is the most effective means to ensure that OMH licensed, certified, funded and operated facilities and hospitals adequately ensure appropriate masking is occurring to prevent the spread of COVID-19. Accordingly, the alternative of not issuing these regulations was rejected, as the potential for serious illness and possible death of both staff and residents as a result of a COVID-19 outbreak outweighed the risk of rejecting such a mandate.

9. Federal Standards:

The regulatory amendments do not exceed any minimum standards of the Federal Government for the same or similar subject areas.

10. Compliance Schedule:

This rulemaking will be effective upon filing a Notice of Emergency Adoption and Revised Rulemaking in the State Register.

Regulatory Flexibility Analysis

Effect of Rule:

There are approximately 35 county operated mental health clinics. Including all OMH funded ambulatory and residential providers, there are over 100 such providers. This regulation will not impact local governments or small businesses unless they operate a facility licensed by this Office.

Compliance Requirements:

This regulation primarily requires facilities and hospitals to promptly coordinate the masking of all individuals and personnel entering such facilities or hospitals during designated periods of COVID prevalence.

Professional Services:

No professional services are required by this regulation.

Compliance Costs:

This regulation requires OMH licensed and operated facilities and hospitals to promptly coordinate the masking of their residents and personnel. Costs are expected to be minimal given the current prevalence of masking.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities facilities and hospitals have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Small Business and Local Government Participation:

Given the seriousness of COVID-19 if contracted, particularly by older adults or persons with comorbidities, small business and local governments were not directly consulted. However, the Office will notify such

entities of the existence of these regulations and the opportunity to submit comments or questions to the Department.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Although 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.

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

This regulation imposes no additional paperwork. Although the regulation may require recordkeeping by facilities, including documentation in personnel files, these records must already be maintained by facilities. Additionally, no additional professional services are required by this regulation.

Costs:

Costs are expected to be minimal given the prevalence of masking in health facilities.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities facilities have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Rural Area Participation:

Given the seriousness of the COVID-19 virus particularly in congregate care settings and the need for services to be provided in person where appropriate, facilities located in rural areas were not directly consulted. However, the Office will notify covered entities located in rural areas of the existence of these regulations and the opportunity to submit comments or questions to the Office.

Job Impact Statement

A Job Impact Statement for this regulation is not being submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and/or employment opportunities.

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Certified Residential Opportunities

I.D. No. PDD-37-21-00001-A

Filing No. 679

Filing Date: 2022-08-30

Effective Date: 2023-03-14

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

Action taken: Addition of Subpart 636-3 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Certified Residential Opportunities.

Purpose: To provide equity in opportunities for certified residential housing.

Text or summary was published in the September 15, 2021 issue of the Register, I.D. No. PDD-37-21-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Beth Babcock, Office for People With Developmental Disabilities, 44 Holland Ave Office of Counsel, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed

Revised Regulatory Impact Statement

1. Statutory authority:

a. The Office for People With Developmental Disabilities (OPWDD) has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with intellectual and developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law (MHL) Section 13.07.

b. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS MHL Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerned with the operation of programs and the provision of services, as stated in the NYS MHL Section 16.00. The regulation also ensures compliance by OPWDD certified and operated residences with the proper provision of services.

2. Legislative objectives: The proposed regulations further legislative objectives embodied in MHL sections 13.07, 13.09(b), and 16.00. The proposed regulation adds Title 14 NYCRR Subpart 636-3 in order to provide equity in the process for obtaining certified housing based on an individual's level of need.

3. Needs and benefits: The proposed regulation adds Title 14 NYCRR Subpart 636-3 to define processes for providers of residential services and care management services. Having formal, codified rules will become increasingly necessary as OPWDD implements resource management initiatives and takes more control over capacity management. These proposed regulations would continue OPWDD's authority to (1) assess individuals' needs for OPWDD and certified housing, (2) determine level and category of need, (3) involve providers in working with OPWDD to place individuals in residential opportunities, (4) regulate the ability of providers to place individuals without following the regulatory process, (5) ensure residential providers provide updated information about residential sites, (6) ensure residential providers appropriately screen individuals based on level of need, (7) specify care managers maintain updated individual information and notify OPWDD of any relevant changes, (8) specify care managers ensure certain information is available prior to a referral for housing, (9) ensure care managers explore non-certified options before making a residential referral, and (10) to ensure equity in the process for obtaining certified housing.

4. Costs:

a. Costs to the Agency and to the State and its local governments: There is no anticipated impact on Medicaid expenditures as a result of the proposed regulations, as the entities that provide these services will only be providing such services to individual's already receiving Medicaid, in accordance with existing OPWDD policies and processes.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements.

b. Costs to private regulated parties: There are no anticipated costs to regulated providers to comply with the proposed regulations. As the regulation only solidifies current practices, there should not be any noticeable additional paperwork requirements, and accordingly, no additional paperwork costs. Furthermore, paperwork can be submitted electronically.

5. Local government mandates: This rule would not apply to local government units that deliver day habilitation and site-based prevocational services. There are no new requirements imposed by the rule on any other county, city, town, village; or school, fire, or other special district.

6. Paperwork: Providers will experience an increase in paperwork as a result of the proposed regulations. Additional reporting requirements regarding the level of need of individuals will help to ensure equity in the process to obtain certified housing.

7. Duplication: The proposed regulations do not duplicate any existing State or Federal requirements on this topic.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations. These changes are necessary to help ensure equity in opportunities for certified housing.

9. Federal standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The effective date for enforcement of the regulation will be 60 days after adoption. The proposed regulations were discussed with and reviewed by representatives of providers in advance of