

at the expense of the Commission consistent with current enforcement needs and realities, while allowing a prospective owner of a claimed horse ("claimant") to arrange for the Commission to test the horse at the claimant's expense at the conclusion of the race. Both the harness and thoroughbred rules for testing all claimed horses were adopted in 1983 and require revision to reflect equine testing priorities.

Sections 4038.17 and 4109.5 will be amended to no longer require the stewards and judges to designate every claimed horse for post-race equine drug testing. The proposed amendments will require such testing by the Commission, however, if the claimant had requested such testing at the claimant's expense on the claim form. Sections 4038.5 and 4109.3 will be amended to provide a method for a claimant to post sufficient funds to pay for the cost of such requested testing, in the same manner as sufficient funds are posted to pay for a claimed horse, in advance of the race.

Under the current rules, the Commission must test all horses that are claimed, which is problematic given the cost of testing when weighed against realistic fiscal implications and the priorities of the Commission's equine drug testing program. All claimed horses have to be tested whether there is a basis for testing or not, the Commission has no flexibility in determining which claiming horses should be tested, and there is no discretion granted to withhold testing in the absence of any basis for testing a claiming horse. No other major racing jurisdiction has such a requirement.

In claiming, equine testing is not directly related to the integrity of the racing contest. A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race in which the horse is entered by its owner. The potential claimant of a horse in a claiming race must enter a claim before the race. When more than one claim is entered for a horse in a claiming race, the successful claimant is chosen by lot. By entering a horse in a claiming race, the current owner offers the horse for sale to any qualified person who enters a claim. There is no rationale for testing a claiming horse simply because it is sold.

The claimant can nullify a claim in the event of a positive drug test, and so the testing program serves as a distinct benefit to such new owner, who is a private party to what amounts to a sale. It is not uncommon, however, for a claimant to decide not to nullify a claim despite a positive drug test. In such cases, the equine drug testing program serves only to permit a claimant to nullify the claim for unrelated reasons, e.g., because the horse raced poorly.

The Commission's other equine testing rules are more directly related to the results, and therefore the integrity, of a race. Under thoroughbred rule 4012.3 and harness rule 4120.8, for example, equine drug testing is conducted on every winner and at least one other horse designated by the respective stewards or judges. Such equine testing rules will still apply to winners and another designated horse in claiming races if the proposed amendments are adopted.

The amendments to harness rule 4109.5 are also necessary to bring the harness rule into uniformity with the thoroughbred rule by including the clause, "The original trainer shall remain responsible for the claimed horse until the on-track post-race sample collection has been completed." This amendment is necessary to expressly assign a responsibility that, although it has been done in practice, has not been included in the harness rule.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will have no effect on the cost of testing by the Commission and will merely permit the reallocation of limited equine testing funds to other types of equine drug testing conducted by the Commission. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission relied on the studies and advice provided by Dr. George A. Maylin, the Director of the New York State Drug Testing and Research Program.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: None. No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered an alternative suggestion by some regulated parties to preserve the current requirement for equine testing of claimed horses, and to create general fiscal savings by instead testing only one horse, randomly, in each race. This alternative was not considered feasible because random testing is not based on the performance of the horse in a race, such as a winning horse or a beaten favorite, nor was the alternative considered adequate to justify testing a horse

merely because it was claimed, rather than for objective reasons. In addition, while other racing states commonly choose to test the winner and another horse in each race, none routinely test claimed horses at the expense of the racing commission.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

These proposals would discontinue the Commission's practice of collecting a post-race sample from all claimed horses but permit every claimant to have a claimed horse tested at the request and expense of the claimant. The purpose of this proposal is to mitigate the burdensome administrative expense of testing every claimed horse when many claimants do not void a claim, which is their right, in the rare instance when such a sample tests positive. Free testing of every claimed horse is also not a service that is not offered by any other racing jurisdiction.

The racing stewards and judges will continue to select the winner and one other horse, using their judgment and based on the performance of the horse, to be sampled and tested for illicit drug use at the conclusion of each race. Claimants will continue to be able to void a claim if any such post-race sample tests positive for the presence of a prohibited substance.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirement of Specific Minimum Penalties for Certain Multiple Medication Violations

I.D. No. SGC-46-15-00007-P

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

Proposed Action: Addition of Part 4045 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutual Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Requirement of specific minimum penalties for certain multiple medication violations.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Text of proposed rule: A new Part 4045, §§ 4045.1 to 4045.6, would be added to 9 NYCRR, to read as follows:

Part 4045. Minimum Penalty Enhancement.

§ 4045.1. Definitions.

The following terms, when used in this Part, have the following meanings:

(a) ARCI Penalty Guidelines means the penalty guidelines published in "Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule," Version 8.0 (revised December 2014) of the Association of Racing Commissioners International, Inc., which are hereby incorporated by reference.

(b) Equine drug rule means any law, rule, regulation or order that restricts the administration to, or presence in, a racehorse of a drug or other substance in New York or another racing jurisdiction.

(c) Final adjudication means a ruling or order of a racing commission that is not currently subject to an administrative or judicial stay, and if such ruling or order is subjected subsequently to a stay, then the ruling or order existing after any such stay ends.

(d) Precipitating equine drug rule violation means an equine drug rule violation committed in New York that causes or may cause, depending on the final adjudication of a ruling or order of a racing commission, the penalties of this section to apply.

(e) Racing commission means the agency regulating horse racing in a jurisdiction that has horse racing and pari-mutuel wagering.

§ 4045.2. General.

The commission shall suspend the occupational licenses of a habitual or persistent violator of equine drug rules as an additional penalty when there is a precipitating equine drug rule violation. This suspension shall constitute the bare minimum overall penalty enhancement that arises from

a previous violation or violations of equine drug rules, wherever committed, and the commission shall continue to apply its own much broader and stricter standards when determining the appropriate penalty for the precipitating and other equine drug rule violations.

§ 4045.3. Points.

(a) When a precipitating equine drug rule violation occurs, the commission shall examine the equine drug rule violation history of the violator and assign a point value to other equine drug rule violations as set forth in this section.

(b) The commission shall assign six points, which shall accumulate permanently, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class A in the ARCI Penalty Guidelines;

or
(2) is not classified in the ARCI Penalty Guidelines, but has a very high potential to affect race performance and no generally accepted veterinary use in racing horses, subject to any adjustments that apply as set forth in this section.

(c) The commission shall assign four points, which shall accumulate with points resulting from other violations committed within a three-year period, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class B in the ARCI Penalty Guidelines;

or
(2) is not classified in the ARCI Penalty Guidelines, but has a high potential to affect race performance and

(i) has a high potential for abuse; or
(ii) has no generally accepted veterinary use in racing horses, subject to any adjustments that apply as set forth in this section.

(d) The commission shall assign two points, which shall accumulate with points resulting from other violations committed within a two-year period, for a violation involving a drug or other substance that is classified as Penalty Class C in the ARCI Penalty Guidelines, subject to any adjustments that apply as set forth in this section.

(e) The commission shall assign one point, which shall accumulate with points resulting from other violations committed within a one-year period, for a violation involving a drug or other substance that:

(1) is classified as Penalty Class D in the ARCI Penalty Guidelines;

or
(2) does not fall within any other subdivision of this section, subject to any adjustments that apply as set forth in this section.

(f) No points shall be assigned for a violation involving a drug or other substance that has no effect on the physiology of a racing horse except to improve nutrition or to treat or prevent infections or parasite infestations.

(g) No points shall be assigned for any violations that occurred before January 1, 2014.

(h) The point values set forth in subdivisions (c), (d) and (e) of this section are reduced by one-half for any drug or other substance that is listed in section 4043.3 of this Subchapter.

(i) If a violation involves more than one drug or substance, then the commission shall assign to such violation not less than the highest point value of any one of the drugs or substances and shall assign additional points for each drug or substance that could have the effect of substantially altering the nature or effect of such drugs or other substances on the horse.

(j) If multiple violations involving one drug or substance are committed before a licensee is notified of a positive laboratory test, then the commission may assign lesser points for the violations, although not less than the points for a single violation, when the responsible parties are able to show that the multiple violations occurred as the result of an honest and unavoidable mistake.

(k) The commission shall assign point values as of the date of a violation.

(l) Points assigned for an equine drug rule violation are not removed from a licensee's record when they serve as a basis to suspend a license. Points continue to accumulate for the time periods that are set forth in subdivisions (c), (d) and (e) of this section.

§ 4045.4. Administrative action.

The commission shall take the following administrative action after a final adjudication of the commission establishes that a licensee has committed a precipitating equine drug rule violation in New York:

(a) The commission shall calculate the points applicable to such licensee to determine whether to take any further administrative action pursuant to this Part.

(1) A licensee may be mailed a letter advising such licensee of the status of the equine drug violation record of such licensee and any possible future action that may be taken in the event of such licensee's accumulation of additional points.

(2) Although point values shall be assigned as of the date of each violation, the commission shall not initiate a suspension pursuant to this Part until after the final adjudication of each equine drug rule violation for which points are assigned pursuant to this Part.

(3) When a precipitating equine drug rule violation results in the licensee having accumulated three or more points based on final adjudica-

tions of equine drug rule violations, the commission shall find that a licensee is a habitual or persistent equine drug rule violator.

(b) The Director of the Division of Horse Racing and Pari-Mutuel Wagering shall suspend the occupational licenses of a habitual or persistent equine drug rule violator, at a minimum, as follows:

(1) if the licensee has accumulated 3 to 5.5 points as a result of equine drug rule violations, a suspension of 30 days;

(2) if the licensee has accumulated 6 to 8.5 points as a result of equine drug rule violations, a suspension of 60 days;

(3) if the licensee has accumulated 9 to 10.5 points as a result of equine drug rule violations, a suspension of 180 days; and

(4) if the licensee has accumulated 11 or more points as a result of equine drug rule violations, a suspension of one year.

(c) Such license suspensions shall in no way affect any administration action taken under any other provision of this Subchapter, including the imposition of a penalty for the precipitating or other equine drug rule violation in New York.

(d) The Director of the Division of Horse Racing and Pari-Mutuel Wagering, on behalf of the commission, may proportionately reduce such suspension, however, when convinced by clear and convincing evidence that the commission had already enhanced, based on one or more of the predicate equine drug rule violations, the penalty imposed on the licensee for the precipitating equine drug rule violation.

(e) The State Steward may, when authorized by the Director of the Division of Horse Racing and Pari-Mutuel Wagering, add the habitual or persistent equine drug rule violator suspension when issuing a ruling upon a precipitating equine drug rule violation.

§ 4045.5. Start of suspension.

A habitual or persistent equine drug rule violator suspension shall not take effect until the commission has notified the licensee in writing of the suspension and

(a) the licensee waives in writing the right to an adjudicatory hearing;

(b) the licensee does not, within 10 days, make a written application for an adjudicatory hearing before the commission; or

(c) an administrative stay for the adjudicatory hearing has expired and no further stay has been granted to the licensee.

§ 4045.6. Adjudicatory hearing.

(a) A habitual or persistent equine drug rule violator may, within 10 days of service upon such violator of a notice of a suspension imposed by this Part, file a written application for an adjudicatory hearing before the commission. A request that is not filed within 10 days shall be null and void and the licensee shall have waived any right to an adjudicatory hearing.

(b) If a licensee requests an adjudicatory hearing for a suspension imposed pursuant to this Part, the commission shall issue an administrative stay of the habitual or persistent equine drug rule violator suspension. Such stay shall be for 45 days from the date of service on the licensee of the notice of the suspension. The licensee may request, on motion with reasonable notice to the secretary of the commission, filed in writing, an extension of such stay for good cause shown that the licensee has not been able to participate in an evidentiary hearing within such period of time. The director of the Division of Horse Racing and Pari-Mutuel Wagering shall decide such motion on behalf of the commission, and the decision of such director shall be final. Upon the completion of the evidentiary hearing, another administrative stay of the suspension shall be issued until such time as the commissioners have taken final agency action.

(c) The adjudicatory hearing shall be conducted pursuant to Part 4550 of this Chapter.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, Acting Secretary, New York State Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, New York 12305-7500, (518) 388-3407, email: gamingrules@gaming.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.

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(2), 104(1), 104(19) and 122. Under Section 103(2), the Commission is responsible to supervise, regulate, and administer all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 continues previous rules and regulations of the legacy New York State Racing and Wagering Board, subject to the authority of the Commission to modify or abrogate such rules and regulations.

2. Legislative objectives: To enable the Commission to enhance the integrity and safety of thoroughbred pari-mutuel racing.

3. Needs and benefits: This rulemaking will add a new Part 4045 to 9 NYCRR and require specific minimum penalties for certain multiple violations of equine drug rules.

Under this proposal, the Commission would impose a bare minimum license suspension, after the occurrence of an equine drug rule violation in New York, when the Commission determines that the offender meets the criteria to be considered a habitual or persistent violator.

The proposal assigns, in section 4045.3, a specific number of points for each type of equine drug violation, whether committed in New York or elsewhere. A drug that has a very high potential to affect race performance and no therapeutic reason to given to a horse, for example, would be assigned the most points. Points would remain on a person's license history for a period of time determined by the seriousness of the drug.

A minimum mandatory license suspension is assigned, in section 4045.4, based on the accumulation of such points within specified time periods. The minimum mandatory penalty enhancement would be 30, 60, 180 or 365 days, depending on how many points have accumulated against the licensee. A penalty enhancement would apply for only the most serious or persistent equine drug violators.

The Commission, when also determining the penalty for an equine drug rule violation that precipitates this action, may still consider previous rule violations, but shall proportionately reduce the minimum penalty enhancement when appropriate to avoid multiple penalty enhancements for the same previous rule violations.

The minimum penalty enhancement suspension would not begin until after any pending challenges to the underlying rule violations were resolved, as set forth in section 4045.5, and after a hearing, if timely requested, as provided in section 4045.6.

This rulemaking is a model rule of the Association of Racing Commissioners International, Inc. ("ARCI") and is anticipated to be adopted by racing commissions throughout the United States. The adoption of this proposed rule will help to discourage horsepersons from having recurring violations of equine drug rules.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: This amendment would not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. There will be no costs to local governments because they do not regulate pari-mutuel racing activities.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Commission has determined that no costs will be imposed because the rule does not create any mandatory new duty or obligation.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: The Commission will assess a bare minimum penalty enhancement, when applicable, when an equine drug rule is violated in New York. The affected party may request a hearing. The Commission already examines the basis of this assessment, i.e., the licensee's history of equine drug (and other) rule violations. A permanent record of such violations is maintained by the ARCI.

7. Duplication: None.

8. Alternatives: The Commission considered and rejected not proposing this rule. The Commission already examines a violator's history of past violations when determining the appropriate penalty for a current rule violation. It is possible, however, that the Commission might not impose a penalty that meets the floor established by the proposed bare minimum enhancement. Adopting this proposal is the most effective means to ensure that an appropriate bare minimum penalty will be imposed, and also supports a national effort to establish a uniform penalty floor in various racing jurisdictions.

9. Federal standards: None.

10. Compliance schedule: The proposed rule does not create any additional requirements with which regulated persons must comply.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal only authorizes the Commission to assess a minimum penalty enhancement when an equine drug violation occurs in New York and the offender has a specified significant history of such violations in New York or elsewhere. No regulated party will need a period to cure a pending matter because the penalty enhancement will apply only if an additional rule violation occurs in the future.

Such regulation will serve to enhance the integrity of racing and the health and safety of racehorses by serving as a deterrent to habitual and persistent equine drug rule violations. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Department of Health

NOTICE OF ADOPTION

Chronic Renal Dialysis Services (CRDS)

I.D. No. HLT-22-15-00016-A

Filing No. 964

Filing Date: 2015-11-03

Effective Date: 2015-11-18

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

Action taken: Amendment of Part 757 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Chronic Renal Dialysis Services (CRDS).

Purpose: To update the CRDS provisions concerning Medicare and Medicaid Programs for coverage for End Stage Renal Disease Facilities.

Text or summary was published in the June 3, 2015 issue of the Register, I.D. No. HLT-22-15-00016-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: regsqa@health.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Early Intervention Program

I.D. No. HLT-46-15-00006-P

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

Proposed Action: Amendment of Subpart 69-4 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2559-B

Subject: Early Intervention Program.

Purpose: To conform existing program regulations to Federal regulations and State statute.

Public hearing(s) will be held at: 1:00 p.m. to 3:00 p.m., Dec. 21, 2015 at School of Public Health Auditorium, University at Albany, One University Place, Rensselaer, NY

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 (Full text is posted at the following State website: www.health.ny.gov): This notice of proposed rulemaking amends 10 NYCRR Subpart 69-4 governing the Early Intervention Program, to conform to federal regulations, 34 CFR Parts 300 and 303, issued by the U.S. Department of Education and amendments to Title II-A of Article 25 of the Public Health Law (PHL).

Section 69-4.1(b) is revised to include initial, as well as ongoing procedures in the definition of assessment. Dominant or native language as defined in § 69-4.1(j) is amended to clarify that when used with respect to an individual who is limited English proficient, dominant or native language means the language or mode of communication normally used by the individual; or in the case of a child, the language normally used by