



MEETING BOOK

AUGUST 21, 2014



**Meeting Agenda
August 21, 2014**

1. Call to Order and Establishment of Quorum
2. Approval of Minutes, Meeting of July 28, 2014
3. Report of Executive Director
4. Rulemaking
 - a. SGC-28-14-00006-EP, Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)
 - b. SGC-24-14-00001-EP, Rules Pertaining to Sanctions for the Unlawful Acceptance of Public Assistance Benefits at Certain Facilities (Adoption)
 - c. SGC-24-14-00001-EP, Rulemaking on Restrictions on Acceptance of Public Assistance (Re-Adoption)
5. Adjudications
 - a. In the Matter Cash Me Out
 - b. In the Matter of Hurrikanekeelynora
6. New/Old Business
7. Scheduling of Next Meeting
8. Adjournment

###

Item 2. Approval of Minutes, Meeting of July 28, 2014

**NEW YORK STATE
GAMING COMMISSION MEETING**

MINUTES

MEETING of JULY 28, 2014

**ALBANY, NEW YORK
NEW YORK, NEW YORK**

A meeting of the N.Y.S. Gaming Commission was conducted at the N.Y.S. Department of Labor, Brooklyn, and State Capitol Building, Albany. Two-way audio and visual communication was established and maintained between the two meeting locations.

1. Call to Order

The meeting was called to order at 3:52 p.m. by Executive Director Robert Williams. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance in Albany were Commissioners Peter Moschetti and Barry Sample; in New York were Commissioners John Crotty and John Poklemba.

2. Selection of Chair for the Meeting

In the absence of Chairman Mark Gearan, Commissioner Crotty was selected to be Presiding Officer of the meeting by unanimous consent.

3. Approval of the Minutes from June 25, 2014 and July 7, 2014

The Commission considered draft minutes of the meetings conducted on June 25, 2014 and July 7, 2014. The minutes were accepted as offered.

4. Report of Acting Executive Director

Mr. Williams provided an update on the commercial casino development process, and upcoming racing events at the Saratoga Race Course.

5. Gaming Facility Location Board Designation

Commissioners considered the designation of a Chairman from among the five members of the Gaming Facility Location Board.

Commissioner Crotty asked for a motion to designate Kevin S. Law as Chairman.

ON A MOTION BY: Commissioner Sample
APPROVED: 4-0

6. Rulemaking

a. Proposed: New Monopoly® Millionaires' Club Lottery Game

The Commission considered a draft regulation governing a new multi-state lottery draw game to be launched by select state lotteries from Mega Millions and Powerball consortia.

ON A MOTION BY: Commissioner Poklemba
APPROVED: 4-0

b. Proposed: Video Lottery Gaming Facility Hours

The Commission considered a draft regulation amendment to conform rules to recently enacted legislation allowing a change in hours for video lottery gaming facilities.

ON A MOTION BY: Commissioner Moschetti
APPROVED: 4-0

6. New Business/Old Business

No new or old business was offered for discussion.

7. Scheduling of Next Meeting

It was determined the next meeting would be held on August 21, 2014, with a primary meeting location of Saratoga Springs.

9. Adjournment

The meeting was adjourned at 4:09 p.m.

###

Item 4. Rulemaking

- a. SGC-28-14-00006-EP, Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application (Re-Adoption)**



MEMORANDUM

To: ALL COMMISSIONERS

From: Edmund C. Burns

Date: August 13, 2014

Re: Proposed Emergency Rulemaking for Gaming Facility
Application Forms (9 NYCRR Part 5300)

On March 31, 2014, the Commission promulgated emergency rules prescribing both forms for the Request for Applications to Develop and Operate a Gaming Facility and several forms necessary to consider and process Applications for Gaming Facility Licenses.

By publication in the State Register on July 16, 2014, the Commission extended the emergency adoption and issued a notice of proposed rulemaking. The public comment period for the proposed rulemaking will not expire until August 30, 2014, thus permanent adoption is not ripe for consideration. The emergency rule, however, will expire August 25, 2014. To date, the Commission has received no public comment in regard to the rulemaking.

Accordingly, for Commission consideration is the re-adoption of Part 5300 as an emergency rule, with such re-adoption to be filed with the Department of State prior to the expiration of the current emergency rule.

The text of the rules has not changed since the initial emergency adoption on March 31, 2014. The text copy of the proposed rules and various associated publications in the State Register are attached.



attachments

Subchapter C of Chapter IV of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new Part 5300 as follows:

PART 5300

Gaming Facility Applications

§ 5300.1. Application to Develop and Operate a Gaming Facility.

The form of application to develop and operate a gaming facility shall include, without limitation, the following elements:

(a) *Executive summary.* An applicant shall submit a brief executive summary with its application, highlighting the principal terms of the application.

(b) *Applicant information.*

(1) An applicant shall provide identifying information including, without limitation:

(i) Full name (including trade name or d/b/a) of the applicant. If the applicant is a corporation, full name as it appears on the certificate of incorporation, charter, by-laws or other official document.

(ii) Name, title, email address, mailing address and telephone number of the individual to be contacted in reference to the application.

(iii) Principal business address and telephone number for an applicant and, if applicable, the manager of the proposed gaming facility, including the URL for any website maintained by or for the applicant or manager.

(iv) Type of business entity (*e.g.*, corporation, limited liability company, partnership, etc.).

(v) The state (or other jurisdiction) under the laws of which the applicant is incorporated, organized, formed or registered and the Federal tax identification number and evidence of existence or formation as an entity as of a date no later than 10 days prior to the date of submission of the application.

(vi) Ownership chart of the applicant and, if applicable, the manager and their respective affiliates, including percentage ownership interests in the applicant and the manager by their respective direct and indirect owners, illustrating the ultimate owners and real parties in interest. For a publicly traded company, disclosure of owners may be limited to owners owning five percent or more of the publicly traded company.

(vii) Organizational chart of the applicant and, if applicable, the manager, illustrating the organizational structure likely to be used by the applicant or the manager in the event that applicant is awarded a license, including all casino key employees.

(viii) Name, address and title of each director, manager or general partner of the applicant and, if applicable, the manager and each officer and casino key employee of the applicant or manager.

(ix) Name and business address of each person or entity that has a direct or indirect ownership, or other proprietary interest (financial, voting or otherwise) in the applicant and, if applicable, the manager. For a publicly traded company, disclosure of owners may be limited to owners owning five percent or more of the publicly traded company.

(x) Name and business address of all promoters, sponsors, personnel, consultants, sales agents or other entities involved in aiding or assisting the applicant's efforts to obtain a gaming facility license.

(xi) The region and locality in which the gaming facility is proposed to be located.

- (2) An applicant shall identify all conflicts of interest including:
- (i) Any relationship or affiliation of the applicant, manager or any of their respective affiliates that currently exist with any member, employee, consultant or agent of the New York Gaming Facility Location Board or the Commission that is a conflict of interest, or may be perceived as a conflict of interest, during the application process. Further, if any such conflict should arise during the term of the application process, the applicant shall notify the New York Gaming Facility Location Board in writing of such conflict.
 - (ii) Any public officials or officers or employees of any governmental entity, and immediate family members of said public officials, officers or employees, who directly or indirectly own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instruments issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the applicant, the manager, or their affiliates.
 - (iii) Any persons not identified in subparagraph (ii) of this paragraph who have any arrangement, written or oral, to receive any compensation from anyone in connection with the application, the application process or the obtaining of a gaming facility license.
- (3) If the applicant does not identify any conflict of interest, or perceived conflict of interest, the applicant shall state that no direct or indirect conflict of interest, or potential conflict of interest, exists with respect to such proposal.
- (4) If the applicant identifies a direct or indirect conflict of interest, or potential conflict of interest, the applicant shall disclose the conflict of interest or potential conflict of interest and the steps the applicant will take to resolve such conflict of interest or potential conflict of interest.
- (5) The New York Gaming Facility Location Board shall make the final determination as to whether any activity constitutes a conflict of interest. The decision of such board shall be final and without recourse; however, such board shall not make any such decision without providing the applicant or manager, as applicable, with an opportunity to present comments.
- (6) An applicant shall identify any current or previous contract that the applicant has had with, and any current or previous licenses that the applicant has been issued by or under, any department or agency of New York State.
- (7) If the gaming facility will be managed by a manager that is different from the applicant, the applicant shall describe the relationship between the manager and the applicant including, without limitation, a summary of the terms of any and all agreements, contracts or understanding between the manager and the applicant.
- (8) An applicant shall submit, as applicable, copies of the following documents that apply to the applicant, the applicant's owners, any manager or any of the manager's owners:
- (i) certified copy of its certificate of incorporation, articles of incorporation or corporate charter;
 - (ii) by-laws as amended through the date of the application;
 - (iii) certified copy of its certificate of formation or articles of organization of a limited liability company;
 - (iv) limited liability company agreement or operating agreement as amended through the date of the application;
 - (v) certified copy of its certificate of partnership;
 - (vi) partnership agreement as amended through the date of the application;
 - (vii) certified copy of its certificate of limited partnership;

- (viii) limited partnership agreement as amended through the date of the application;
- (ix) other legal instrument of organization;
- (x) joint venture agreement;
- (xi) trust agreement or instrument, each as amended through the date of the application;
- (xii) voting trust or similar agreement; and
- (xiii) stockholder, member or similar agreement.

(c) *Finance and capital structure.* An applicant shall:

(1) describe its finance and capital structure including:

- (i) capital investment plans;
- (ii) a study completed by an independent expert assessing the size of the potential gaming market for the proposed gaming facility;
- (iii) a detailed financial forecast annually for a period of at least 10 years after opening for gaming on a best-, average- and worst-case basis;
- (iv) a qualitative business plan for the proposed gaming facility describing, at minimum, the components and projected results of the material revenue lines and expense categories of the proposed gaming facility, the applicant's sources and availability of financing, the principal business and financing risks of the proposed gaming facility and plans to mitigate those risks;
- (v) a detailed description of how the project will be financed;
- (vi) a detailed description regarding each financing source;
- (vii) a schedule of the financing sources' anticipated capital structure after construction and first three years of operation of the proposed gaming facility;
- (viii) an analysis of how the financing plans for the application fee, application and suitability investigation expenses, license fee, capital investment deposit, construction and first three years of operation of the proposed gaming facility will affect each financing source's compliance with the financial covenants under its current financing arrangements; and
- (ix) all financial commitments and guarantees the applicant or, if applicable, the manager, or its affiliates is prepared to provide to the Commission over and above the deposit or bond required by subdivision 1 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law to ensure that the gaming facility is completed, license conditions are fulfilled and sufficient working capital is available to allow continuous operation in manner described in the applicant's financial forecasts;

(2) submit an independent audit report for each of the last five fiscal years regarding the applicant and each of its parents;

(3) submit bank references, business and personal income and disbursement schedules, tax returns and other reports filed with government agencies and business and personal accounting check records and ledgers and copies of securities analyst and credit rating agency reports for the past three years;

(4) submit all United States Securities and Exchange Commission filings, if any, for the financing sources, for the three fiscal years ended before the date applications are due and any interim period between the end of the most recent fiscal year and the date applications are due;

(5) describe any delinquencies in the payment of any fees or tax required under any federal, state or municipal law within the past 10 years by an applicant; for any payment not made because of a dispute, describe the circumstances;

(6) describe the applicant's and, if applicable, the manager's experience, training and expertise in developing, constructing and operating gaming facilities and related facilities;

(7) describe any destination casino resort or other gaming projects that the applicant and, if applicable, the manager, has publicly announced that it is in the process of acquiring, developing or proposing to acquire or develop;

(8) provide any information relating to legal actions including, without limitation:

(i) pending legal actions, whether civil, criminal or administrative in nature, to which the applicant is a party and a brief description of any such actions;

(ii) any settled or closed legal actions, whether civil, criminal or administrative in nature, against the applicant over the past 10 years;

(iii) any judgments against the applicant within the past 10 years, including the case name, number, court, and what the final ruling or determination was from the court, administrative body or other tribunal;

(iv) a statement whether the applicant was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past 10 years;

(v) a statement whether the applicant was the subject of any order, judgment or decree of any court, administrative body or other tribunal of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past 10 years; and

(vi) a description of any bankruptcies (voluntary or involuntary), assignments for the benefit of creditors, appointments of a receiver or custodian or similar insolvency proceedings made, commenced or pending during the past 10 years by or involving any applicant;

(9) describe any contract, loan agreement or commitment that the applicant has breached or defaulted on during the past 10 years and provide information for any lawsuit, administrative proceeding or other proceeding that occurred as a result of the breach or default;

(10) describe any gaming-related licenses issued in any jurisdiction, and provide a detailed explanation if the applicant has ever had a gaming-related license denied, suspended, withdrawn or revoked, or if there is a pending proceeding that could lead to any of these conditions; and

(11) describe any disciplinary action brought against the applicant by any gaming licensing authority during the past five years.

(d) *Economics*. An applicant shall provide:

(1) market analysis, studies and/or reports evidencing the benefits of the gaming facility including:

(i) market analysis showing benefits of the site location and the estimated recapture rate of gaming-related spending by New York residents travelling to out-of-state gaming establishments;

(ii) studies completed by an independent expert showing the proposed gaming facility's:

(a) overall economic incremental benefits to the region and New York State; and

(b) impact on the local and regional economy, including incremental job creation, the impact on cultural institutions and on small businesses in the host community and surrounding communities; and

(iii) completed studies by an independent expert showing projections for all estimated State, county, and local tax revenue each year for the first five years of operations on a best-, average- and worst-case basis, identifying the source of each element of the tax revenue;

- (2) a description of the proposed gaming facility's inclusion within, and coordination with, a regional and local economic plan;
- (3) a description of plans and minimum commitments for use of New York-based suppliers and materials in the construction and operational phases of applicant's project;
- (4) a description of the employment opportunities created by the proposed gaming facility, including, among other things, the number of employees to be employed at the proposed gaming facility and the pay rate and benefits for employees;
- (5) a description of the competitive environment in which the applicant anticipates the proposed gaming facility will operate over the 10 years after opening;
- (6) a description of the target market segments of the gaming facility;
- (7) the marketing plans for the proposed gaming facility with specific reference to pre-opening marketing and opening celebrations; and
- (8) a description of strategies to be used by the applicant to deal with the cyclical/seasonal nature of tourism demand.

(e) *Land construction and design of physical plant.* An applicant shall:

- (1) identify the location of the proposed gaming facility, including:
 - (i) the dimensions and total acreage of the land that will be developed for the proposed gaming facility;
 - (ii) the address, maps, book and page numbers from the appropriate registry of deeds;
 - (iii) the assessed value of the land for the proposed gaming facility at the time of application, and a description of all ownership interests in the land for the past 20 years, including all easements, options, encumbrances, and other interests in the property, together with all relevant demographic, geographic and environmental information in regard to the site and the surrounding area; and
 - (iv) if the applicant does not currently possess an ownership interest in the location, describe how the applicant intends to acquire the necessary interest in the land in accordance with subdivision 2 of section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law.
- (2) provide copies of current local zoning approvals and any rezoning, variances and/or land use approvals required for the gaming facility site, a detailed explanation of the status of any request for any of the foregoing, together with copies of all filings, including a specific schedule of applications for such approvals and anticipated approval dates;
- (3) provide a description of, and schematics illustrating, the applicant's master plan for the land and the gaming facility site showing major activities and functions, and a phasing plan for the proposed components;
- (4) provide designs for the proposed gaming facility including among other things, a site plan, floor plans, building elevations and perspectives;
- (5) describe the proposed gaming area, including square footage, number and types of table games and slot machines, electronic gaming devices, poker tables and any other forms of gaming, number of gaming positions, specific location of the games and machines in the proposed gaming facility;
- (6) provide a detailed description of the proposed amenities including hotels, meeting and convention facilities, dining facilities, entertainment venues and non-gaming amenities; in addition, provide a statement of how the proposed amenities will compare in quality to other area amenities and those offered in competitive gaming facilities;

(7) provide a detailed description of proposed parking and transportation infrastructure including, among other things, parking spaces for employees, patrons and buses; tour bus, taxi and valet drop-off areas; and service vehicle and satellite parking;

(8) provide a description of mechanical systems and other on-site infrastructure plans;

(9) provide the names, addresses and relevant experiences of the architects, engineers, contractors, and designers of the proposed gaming facility and related proposed infrastructure improvements;

(10) provide a detailed construction budget and timeline for construction, including plans for mitigating impacts during and following construction;

(11) provide information concerning the number and quality of construction jobs to be provided during the construction period;

(12) provide names of all proposed gaming equipment vendors; and

(13) provide a description of the proposed internal controls, electronic surveillance systems and security systems for the proposed gaming facility and any related facilities.

(f) *Assessment of local support and mitigation of local impact.* An applicant shall:

(1) demonstrate local support by submitting to the board a resolution passed after November 5, 2013 by a majority of the membership of the local legislative body of the host community supporting the application;

(2) provide completed studies and reports showing the proposed gaming facility's impact on, among other things, local and regional, social, environmental and traffic infrastructure; and

(3) provide plans for mitigating potential impacts on host and nearby municipalities that might result from the development or operation of the gaming facility.

(g) *Regional tourism and attractions.* An applicant shall describe regional tourism and local promotion efforts including:

(1) promoting local businesses in host and surrounding communities including developing cross-marketing strategies with local restaurants, small businesses, hotels and retail outlets;

(2) establishing partnerships with live entertainment venues that may be impacted by a gaming facility under which the gaming facility actively supports the mission and the operation of the impacted entertainment venues;

(3) contracting with local business owners for provision of goods and services to the gaming facility, including developing plans designed to assist businesses in New York State in identifying the needs for goods and services to the facility;

(4) local agreements designed to expand gaming facility draw, including the number of patrons brought to the region; and

(5) cross-marketing efforts with attractions.

(h) *Measures to address problem gambling.* An applicant shall describe measures to address problem gambling, including among other things, on-site resources available to those affected by gambling-related problems, training for facility employees to help identify those who may have gambling-related problems, exclusion policies, treatment and prevention programs, and metrics the applicant will use to measure whether the applicant is succeeding in efforts to reduce problem gambling.

(i) *Workforce development.* An applicant shall describe:

(1) its workforce development plans including:

- (i) human resource hiring and training practices that promote the development of a skilled and diverse workforce and access to promotion opportunities through a workforce training program;
- (ii) an affirmative action program that identifies specific goals for the utilization of minorities, women, persons with disabilities and veterans on construction, service and professional jobs; and
- (iii) on-the-job opportunities and training in areas and with respect to demographic groups with high unemployment; and

(2) whether the applicant has the support of organized labor for its application and detailed plans for assuring labor harmony during all phases of the construction, reconstruction, renovation, development and operation of the gaming establishment.

(j) *Sustainability and resource management.* An applicant shall describe its sustainability and resource management plans with respect to the gaming facility, including its plans to, among other things, mitigate traffic flow, obtain LEED certification, use energy efficient equipment, manage storm water, conserve water, use renewable energy and monitor energy consumption.

§ 5300.2. Background Investigation.

(a) The Commission may investigate the background of any applicant for a gaming facility license. This investigation may include the background of any related parties in interest to the applicant, including close associates and financial resources of the applicant. Applicants and related parties in interest, as indicated in paragraphs (1) and (2) of this subdivision, shall submit the following supplemental forms as part of a gaming facility license application:

(1) a Gaming Facility License Application Form, as prescribed in subdivision (b) of this section, for each of the applicant, any direct and indirect parent entity of the applicant (including any holding company), any manager, any entity having a beneficial or proprietary interest of five percent or more in an applicant or a manager, and any other entity that may be designated by the New York Gaming Facility Location Board or the Commission; and

(2) a Multi-Jurisdictional Personal History Disclosure Form, as prescribed by subdivision (d) of this section and a Multi-Jurisdictional Personal History Disclosure Supplemental Form, as prescribed in subdivision (f) of this section, for each natural person who is a director, manager, general partner or person holding an equivalent position with the applicant, a manager or any direct or indirect parent entity of the applicant, a casino key employee, a person having beneficial or proprietary interest of five percent or more in an applicant or a manager and any other person that may be designated by the New York Gaming Facility Location Board or the Commission.

(b) *Gaming Facility License Application Form.* A Gaming Facility License Application Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

- (1) The name, title, phone number and email address of a person to be contacted in reference to the application;
- (2) The current and former d/b/a or trade names used by the entity;
- (3) The principal business address of the entity;
- (4) The date and place of formation and information concerning each person forming the entity;
- (5) All other names under which the entity has conducted business and give the approximate time periods during which these names were being used;

- (6) All other addresses presently used by the entity and all addresses from which the entity is presently doing business;
- (7) All addresses, other than those listed in paragraph (6) of this subdivision, that the entity held or from which it was conducting business during the last 10-year period, and give the approximate time periods during which such addresses were held;
- (8) A description of the business conducted and intended to be conducted by the entity and its parent, holding, subsidiary and intermediary entities and the general development of such business during the past five years, or such shorter period as the entity or its parent, holding, subsidiary and intermediary entities may have been engaged in business. The description shall include information on matters such as the following:
- (i) competitive conditions in the industry or industries involved and the competitive position of the entity, if known;
 - (ii) the principal products produced and services rendered by the entity and its parent, intermediary and subsidiary entities, the principal markets for said products or services and the methods of distribution;
 - (iii) the sources and availability of raw materials essential to the business of the entity;
 - (iv) the importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises and concessions held; and
 - (v) a description of any material changes in the business entity's mode of conducting the business;
- (9) A description of any former business, not listed in response to paragraph (8) of this subdivision, that the entity or any parent, intermediary or subsidiary company engaged in during the last 10-year period and the reasons for the cessation of such business. Also indicate the approximate time period during which each such business was conducted;
- (10) Information for each director, trustee, and officer of the entity for the last 10 years. Officers include all persons serving as president, secretary, treasurer, chairman of the board, vice-president, general/corporate counsel or any such other officers as may be prescribed by the entity's governing documents;
- (11) The annual compensation of directors, trustees and officers and whether such compensation is in the form of salary, wages, commissions, fees, stock options, bonuses or otherwise;
- (12) The name, business address, date of birth, and position of each person other than a director, trustee or officer, who received annual compensation of more than \$250,000 and the length of time employed and the amount of compensation;
- (13) A description of all bonus, profit sharing, pension, retirement, deferred compensation and similar plans in existence;
- (14) Describe the nature, type, number of authorized and issued shares, terms, conditions, rights and privileges of all classes of voting, non-voting and other stock issued, or to be issued, or other similar indicia of ownership by the entity including the number of shares of each class of stock authorized or to be authorized and the number of shares of each class of stock outstanding, not held by or on behalf of the issuer, or other similar information applicable to other indicia of ownership as of this date;
- (15) The name, home address, and date of birth of each shareholder, the class held, number of shares held and the percentage of outstanding voting or non-voting securities or other ownership interest held;
- (16) A description of the nature, type, terms, covenants, conditions, and priorities of all outstanding debt and security devices utilized by the entity;
- (17) A description of each person or entity holding any outstanding debt and security devices utilized by the entity;

(18) A description of any options existing or to be created with respect to securities issued by the entity in which description shall include, but not be limited to, the title and amount of securities subject to option, the year or years during which the options were or will be granted, the conditions under which the options were or will be granted, the consideration for granting the option and the year or years during which, and the terms under which, optionees became or will become, entitled to exercise the options, and when such options expire;

(19) The following information for each account for the last 10 years held in the name of the entity or its nominee or otherwise under the direct or indirect control of the entity:

- (i) the name and address of the financial institution;
- (ii) the type of account;
- (iii) the account number; and
- (iv) the dates held;

(20) The name and address of all persons with whom the entity has contracts or agreements of \$250,000 in value or more including employment contracts of more than one year duration, or who have supplied goods and services within the past six months and the nature of such contracts or the goods and services performed;

(21) Information regarding any transaction within the last five years involving a change in the beneficial ownership of the entity's equity securities on the part of any current or former director, officer or beneficial owner of more than 10 percent of any class of equity security;

(22) A description of any civil, criminal, administrative, and investigatory proceedings in any jurisdiction for the entity and each director, trustee or officer as follows:

- (i) any arrest, indictment, charge or conviction for any criminal or disorderly persons offense;
- (ii) any criminal proceeding in which such person has been named a party or an unindicted co-conspirator;
- (iii) any existing civil litigation that resolved within the previous five years to which the entity, its parent, or any subsidiary is a party, if damages are reasonably expected to exceed \$100,000 unless such damages involve claims against the entity that are fully and completely covered under an insurance policy;
- (iv) any judgment order, consent decree or consent order entered against the entity pertaining to a violation or alleged violation of the federal antitrust, trade regulation, or securities laws or similar laws of any jurisdiction; and
- (v) any judgment order, consent decree or consent order pertaining to any state or federal statute, regulation, or code that resulted in a fine or penalty of \$50,000 or more within the past 10 years;

(23) For the entity, parent or any intermediary entity, information regarding any judgments or petitions for bankruptcy or insolvency and any relief sought under any provision of the federal bankruptcy code or any state insolvency law; and information regarding any receiver, fiscal agent, reorganization trustee or similar officer appointed for the property or business of the entity or its parent, holding, intermediary or subsidiaries;

(24) During the last 10 years, whether the entity has had any license or certificate issued by any governmental agency denied, suspended, or revoked. Also, whether the entity, its parent or any subsidiary ever applied in any jurisdiction for a license, permit or other authorization to participate in lawful gambling operations (including casino gaming, horse racing, dog racing, pari-mutuel operation, lottery, sports betting, etc.);

(25) During the last 10 years, whether the entity, its parent or any subsidiary, director, officer, or employee or any third party acting on behalf of the entity made any bribes or kickbacks or made any payments alleged to have been bribes or kickbacks to any employee, company, organization, government official domestic or foreign to obtain favorable treatment;

(26) During the last 10 years whether the entity, its parent, any subsidiary or related entity or individual has:

- (i) donated or loaned property or anything of value for the purpose of opposing or supporting any government, political party, candidate, or committee, either foreign or domestic;
- (ii) made any loans, donations, or other disbursements to its directors, officers, or employees for the purpose of reimbursing such individuals for political contributions, either foreign or domestic; and
- (iii) maintained a bank account or other account, domestic or foreign, not reflected on the books of the entity, or maintained any account in the name of the nominee of the entity;

(27) Provide the names and addresses of any current or former directors, officers, employees or third parties who would have knowledge or information concerning subparagraph (iii) of paragraph (26) of this subdivision;

(28) Provide a copy of the following:

- (i) audited financial statement for the last fiscal year, including, without limitation, an income statement, balance sheet and statement of sources and application of funds, and all notes to such statements and related financial schedules;
- (ii) all annual financial statements prepared in the last five years, any exceptions taken to such statements by the independent auditor retained by the entity and the management response thereto;
- (iii) annual reports to shareholders for the last five years;
- (iv) any annual reports prepared within the last five years on Form 10K pursuant to Securities Exchange Act of 1934;
- (v) the last quarterly unaudited financial statements prepared by or for the entity, which, if the entity is registered with the United States Securities and Exchange Commission, may be satisfied by providing a copy of the most recently filed 10Q;
- (vi) any current report prepared due to a change in control of the entity, acquisition or disposition of assets, bankruptcy or receivership proceedings, changes in the entities certifying accountant, or other material events, which, if the entity is registered with the SEC, may be satisfied by providing a copy of the most recently filed form 8K;
- (vii) each press release issued by the entity for the past five years;
- (viii) last definitive Proxy or Information Statement filed pursuant to the section 14 of the Securities Exchange Act of 1934;
- (ix) registration statements filed in the last five years pursuant to the Securities Act of 1933; and
- (x) all reports and correspondence submitted in the last five years by independent auditors for the entity that pertain to the issuance of financial statements, managerial advisory services, or internal control recommendations;

(29) The name, address, and telephone number of the current outside auditor(s);

(30) A certified copy of the articles of incorporation, charter and by-laws and all amendments and proposed thereto;

(31) A current ownership organizational chart of the entity, its parent entity and each subsidiary of the entity;

(32) A functional table of organization for the entity filing this gaming facility license application form, including position descriptions and the names of persons holding such positions; and

(33) A copy of all Federal Internal Revenue Service tax returns filed by the entity in the last five years.

(c) In addition to the information set forth in subdivision (b) of this section, a completed Gaming Facility License Application Form shall include the following documents, which shall be dated and signed by the President or any officer of the entity authorized to affirm and sign the documents:

(1) a release authorization directing all courts, probation departments, selective service boards, employers, educational institutions, banks, financial institutions and all governmental agencies, federal, state and local, both foreign and domestic, to release any and all information pertaining to the entity as required by the Commission and its authorized agents and representatives;

(2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of any material or information acquired during the licensing or investigation process;

(3) a consent to inspections, searches and seizures and the supplying of handwriting exemplars; and

(4) a signed, dated and notarized affidavit.

(d) *Multi-Jurisdictional Personal History Disclosure Form.* A Multi-Jurisdictional Personal History Disclosure Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

(1) name, including maiden name and any aliases or nicknames and applicable dates of use;

(2) date of birth;

(3) physical description;

(4) current address and residence history;

(5) Social Security number, which information is voluntarily provided in accordance with section 552a of the United States Code;

(6) citizenship and, if applicable, information regarding resident alien status, including information regarding passports;

(7) marital history, dependents and other family data;

(8) the gaming licensee or applicant, gaming vendor licensee or applicant or holding company, as applicable, with which the applicant is affiliated, and the nature of the applicant's position with or interest in such entity;

(9) telephone number at the current place of employment;

(10) employment history of the applicant and applicant's immediate family;

(11) education and training;

(12) record of military service;

(13) government positions and offices presently or previously held, and the offices, trusteeships, directorships or fiduciary positions presently or previously held with any business entity;

(14) trusteeships or other fiduciary positions held by the applicant and the applicant's spouse, and any denial or suspension of, or removal from, such positions;

- (15) current memberships in any social, labor or fraternal union, club or organization; and
- (16) licenses and other approvals held by or applied for by the applicant or, where specified, the applicant's spouse, in New York State or any other jurisdiction, as follows:
- (i) any professional or occupational license held by or applied for by the applicant or the applicant's spouse;
 - (ii) motor vehicle registrations and operator licenses held by or applied for by the applicant or the applicant's spouse, and any revocation or suspension thereof;
 - (iii) possession or ownership of any pistol or firearm, or any application for any firearm permit, firearm dealer's license, or permit to carry a pistol or firearm;
 - (iv) any license, permit, approval or registration required to participate in any lawful gambling operation in New York State or any jurisdiction held by or applied for by the applicant; and
 - (v) any denial, suspension or revocation by a government agency of a license, permit or certification held by or applied for by the applicant or the applicant's spouse, or any entity in which the applicant or the applicant's spouse was a director, officer, partner or any owner of a five percent or greater interest;
- (17) any interest in or employment presently or previously held by the applicant with any entity that has applied for a permit, license, certificate or qualification in connection with any lawful gambling or alcoholic beverage operation in New York State or any other jurisdiction; and any current employment or other association by the applicant's family with the gambling or alcoholic beverage industries in New York State or any other jurisdiction;
- (18) civil, criminal and investigatory proceedings in any jurisdiction, as follows:
- (i) arrests, charges or offenses committed by the applicant or any member of the applicant's immediate family;
 - (ii) any instance where the applicant has been named as an unindicted party or co-conspirator in a criminal proceeding or held as a material witness;
 - (iii) any appearance before, investigation by or request to take a polygraph examination by any governmental agency, court, committee, grand jury or investigatory body, and any refusal to comply with a request to do so;
 - (iv) any pardons, dismissals, suspensions or deferrals of any criminal investigation, prosecution, or conviction;
 - (v) lawsuits to which the applicant was or is a party;
 - (vi) any citation or charge for a violation of a statute, regulation or code of any jurisdiction, other than a criminal disorderly persons, petty disorderly persons or motor vehicle violation; and
 - (vii) any use, distribution, or possession of any narcotic, hallucinogenic, drug, barbiturate, amphetamine or other substance other than pursuant to a valid prescription issued by a licensed physician;
- (19) any exclusion or barring from any casino, gaming establishment or gambling/gaming related entity in any jurisdiction;
- (20) financial data, as follows:
- (i) all assets and liabilities of the applicant, and the applicant's spouse and dependent children as indicated on the net worth statement and supporting schedules in a format prescribed by the Commission, including cash, bank accounts, notes payable and receivable, real estate and income taxes

- payable, loans, accounts payable and any other indebtedness, contingent liabilities, securities, real estate interests, real estate mortgages and liens, life insurance, pension funds, vehicles and other assets;
- (ii) bank accounts, including any right of ownership in, control over or interest in any foreign bank account, and safe deposit boxes;
 - (iii) real estate interests held by the applicant or the applicant's spouse or dependent children;
 - (iv) businesses owned;
 - (v) copies of Federal tax returns and related information;
 - (vi) judgments or petitions for bankruptcy, insolvency or liquidation concerning the applicant or any business entity in which the applicant held a five percent or greater interest, other than a publicly traded corporation, or in which the applicant served as an officer or director;
 - (vii) any business entity in which the applicant was an owner, director or officer that has been placed under some form of governmental administration or monitoring;
 - (viii) any garnishment or attachment of wages, charging order or voluntary wage execution, including the amount, court, nature of the obligation and the holder of the obligation;
 - (ix) any repossessions of real or personal property;
 - (x) any guarantees, co-signatures or insuring of payments of financial obligations of any persons or business entities;
 - (xi) status as executor, administrator or fiduciary of any estate;
 - (xii) life insurance policies on the applicant's life that name someone other than the applicant's family as a beneficiary;
 - (xiii) positions held, assets held, or interest received in any estate or trust;
 - (xiv) whether the applicant has ever been bonded for any purpose or been denied any type of bond, including the nature of the bond and if applicable, the reason for denial;
 - (xv) insurance claims in excess of \$100,000 by the applicant or the applicant's spouse or dependent children;
 - (xvi) referral or finder's fees in excess of \$10,000;
 - (xvii) loans in excess of \$10,000 made or received by the applicant, the applicant's spouse or dependent children;
 - (xviii) gifts in excess of \$10,000 given or received by the applicant or the applicant's immediate family;
 - (xix) brokerage or margin accounts with any securities or commodities dealer;
 - (xx) currency exchanges in an amount greater than \$10,000;
 - (xxi) information regarding any instance where the applicant or any entity in which the applicant was a director, officer or holder of a five percent or greater interest has traded in foreign currencies or in a foreign commodities exchange, sold or purchased discounted promissory notes or other commercial paper, or been a party to any leasing arrangements in excess of \$50,000; and
 - (xxii) information regarding any ownership interest or financial investment by the applicant in any entity that holds or is an applicant for a license issued by the Commission, or in any gambling venture that does not require licensure by the Commission, including persons providing or reasonably anticipated to provide the applicant with support in the financing of such investment or interest; the extent and nature of the applicant's involvement in the management and operation of the entity;

whether the applicant has or has agreed to assign, pledge or hypothecate such interest or investment, the nature and terms of any such transaction and a copy of any such agreement.

(e) In addition to the information set forth in subdivision (d) of this section, a completed Multi-Jurisdictional Personal History Disclosure Form shall include the following:

- (1) the name, address, occupation and phone number of persons who can attest to the applicant's good character and reputation;
- (2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the license or investigation process;
- (3) a consent to inspection, searches and seizures and the supplying of handwriting exemplars; and
- (4) a signed, dated and notarized affidavit of truth.

(f) *Multi-Jurisdictional Personal History Disclosure Supplemental Form.* A Multi-Jurisdictional Personal History Disclosure Form shall require the applicant to provide the following information and such additional information as the Commission may in its discretion determine:

- (1) name and nature of position with or interest in a gaming facility license applicant or licensee, a gaming vendor applicant or licensee, or a holding company as applicable;
- (2) current photograph;
- (3) citizenship, and if applicable, resident alien status, including any certificate of naturalization, United States Citizenship and Immigration Services documentation, employment authorization with expiration date, country of which the applicant is a citizen, place of birth, proof of entry to the United States, and name of address of sponsor upon arrival;
- (4) any ownership interest, financial interest, or financial investment in any business entity applying to or presently licensed by the Commission; and
- (5) an applicant shall disclose whether, during the last 10 years, any entity in which it had been a director, officer, or principal employee or a holder of five percent or greater interest has:
 - (i) made or been charged with (either itself or through third parties acting for it) bribes or kickbacks to any government official, domestic or foreign, to obtain favorable treatment or to any company, employee or organization to obtain a competitive advantage;
 - (ii) held a foreign bank account or has had authority to control disbursements from a foreign bank account;
 - (iii) maintained a bank account, or other account, whether domestic or foreign, that is not reflected on the books or records of the business;
 - (iv) maintained a domestic or foreign numbered bank account or other bank account in a name other than the name of the business;
 - (v) donated or loaned corporate funds or corporate property for the use or benefit of, or for the purpose of opposing, any government, political party, candidate or committee either domestic or foreign;
 - (vi) compensated any of its directors, officers or employees for time and expenses incurred in performing services for the benefit of or in opposition to any government or political party domestic or foreign; and
 - (vii) made any loans, donations or other disbursements to its directors, officers or employees for the purpose of making political contributions or reimbursing such individuals for political contributions whether domestic or foreign.

(g) An applicant shall provide copies of Federal and state tax returns and related information for the last five years, including:

- (1) United States Internal Revenue Service forms 1040, 1040X and related schedules;
- (2) an audit narrative or failure to file narrative; and
- (3) foreign tax returns and schedules.

(h) An applicant shall provide a signed, dated and notarized release authorization that shall direct all courts, probation departments, selective service boards, employers, educational institutions, banks, financial and other institutions and all governmental agencies, Federal, state and local, both foreign and domestic, to release any and all information pertaining to the applicant as requested by the Commission, the New York State Gaming Facility Location Board, or any employee, agent or representative, thereof.

(i) In addition to the information set forth in subdivision (f) of this section, a completed Multi-Jurisdictional Personal History Disclosure Supplemental Form shall include the following:

- (1) the name, address, occupation, phone number, email address and years known of persons who can attest to the good character and reputation of the applicant;
- (2) a waiver of liability as to New York State and its instrumentalities and agents for any damages resulting from any disclosure or publication of material or information acquired during the licensing process, or during any inquiries, investigations or hearings;
- (3) a consent to inspection, searches and seizures and the supplying of handwriting exemplars;
- (4) a notification and authorization form for employment credit report; and
- (5) a signed, dated and notarized affidavit.

§ 5300.3. Fingerprinting.

An applicant for a gaming facility occupational license, shall, at the time of application be fingerprinted under the supervision of the Commission or by a person or agency acceptable to the Commission and shall pay to the Commission an amount set by the Commission to cover the costs of such fingerprinting. The Commission may, for good cause shown, permit an applicant or licensee alternatively to submit sets of classifiable fingerprints on fingerprint impression cards provided by the Commission.

§ 5300.4. Duty to Update Application.

(a) Upon completion of an application prescribed in section 5300.1 of this Part and prior to the award of a gaming facility license, an applicant has a continuing duty to disclose to the New York Gaming Facility Location Board promptly, in writing (and electronically), any changes or updates to the information submitted in the application or any related materials submitted in connection therewith.

(b) The New York Gaming Facility Location Board may in its sole discretion determine to accept the update as an amendment to an application. The New York Gaming Facility Location Board shall not be required to accept any such information.

(c) An applicant's failure to promptly notify the New York Gaming Facility Location Board of any changes or updates to information previously submitted may be grounds for disqualification of an applicant from consideration by the New York Gaming Facility Location Board.

§ 5300.5. Application Fees.

An applicant to develop and operate a gaming facility in New York State shall pay the \$1 million fee prescribed by subdivision 8 of section 1316 of the Racing, Pari-Mutuel Wagering and Breeding Law by electronic fund transfer as the Commission may direct. An applicant shall submit this fee on a date established by the Commission, which shall be posted on the Commission's website as well as included in the schedule provided

in the application to develop and operate a gaming facility in New York State. The application fee shall be non-refundable, except that the unexpended portion of the fee shall be returned to an applicant, minus any reasonable processing or investigative costs the Commission has incurred, including overhead, administrative expenses, and any other costs directly or indirectly incurred.

with, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

Section 6911 of the Education Law, as added by Chapter 364 of the Laws of 2013, effective September 27, 2014, establishes certification for clinical nurse specialists and protects the title "clinical nurse specialist" and the designation "CNS" to ensure that only those properly educated and prepared to be clinical nurse specialists hold themselves out as such. The proposed amendment to section 52.12 of the Regulations of the Commissioner and addition of section 64.8 to the Regulations of the Commissioner of Education implement Chapter 364 of the Laws of 2013 by establishing criteria for certification as a clinical nurse specialist, including: registration, admission, curriculum and credential requirements for clinical nurse specialist education programs; an application filing requirement; and license and education requirements.

The proposed amendment would also repeal certain regulatory provisions relating to nurse practitioner certification in section 64.4 of the Regulations of the Commissioner of Education, as those provisions no longer have any application.

The proposed amendment to section 52.12 of the Regulations of the Commissioner and addition of section 64.8 of the Regulations to the Commissioner of Education implement specific statutory requirements and directives. Therefore, any impact on jobs and employment opportunities created by establishing certification requirements for clinical nurse specialists is attributable to the statutory requirement, not the proposed amendment and rule, which simply establish standards that conform to the requirements of the statute.

The proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that they will have no adverse impact on jobs or employment opportunities attributable to their adoption or only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

New York State Gaming Commission

EMERGENCY RULE MAKING

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-15-14-00001-E

Filing No. 263

Filing Date: 2014-03-31

Effective Date: 2014-03-31

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

Action taken: Addition of sections 5300.1-5300.5 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The Commission has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law (the "PML"), will issue a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York. The immediate adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted therewith, as required by subdivision 2 of section 1307 of the PML, to enable the Gaming Facility Location Board to carry out its statutory duties. Standard rule making procedures would prevent the Gaming Facility Location Board from commencing the fulfillment of its statutory duties.

Subject: Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Substance of emergency rule: This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission ("Commission") to prescribe the form of the applications for a gaming facility license.

The new Part of the Gaming Commission regulations describes the form of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant's duty to update its application with any updates following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 28, 2014.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prohibited Substances and Out of Competition Drug Testing for Harness Racing

I.D. No. SGC-15-14-00005-P

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

Proposed Action: Amendment of section 4120.17 of Title 9 NYCRR.

Statutory authority: Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 122 and 902(1)

Subject: Prohibited substances and out of competition drug testing for harness racing.

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

Text of proposed rule: Section 4120.17 of 9 NYCRR would be amended as follows:

§ 4120.17. Out-of-competition testing.

(a) *Out-of-competition collection of samples.*

(1) *The commission may at a reasonable time on any date take a blood, urine or other biologic sample from a horse that is on a nomination list or [(a) Any horse on the grounds of a racetrack under the jurisdiction of the commission or stabled off track grounds is subject to testing without advance notice for blood doping, gene doping, protein and peptide-based drugs, including toxins and venoms, and other drugs and substances while] under the care or control of a trainer or owner who is licensed by the commission, in order to enhance the ability of the commission laboratory to detect or confirm the impermissible administration of a drug or other substance to the horse.*

(2) *Horses to be tested may be selected at random, for cause or as determined by a commission judge or executive official.*

[(b) Horses to be tested shall be selected at the discretion of the State judges or any commission representative.]

(3) *A selected horse that is not made available for sampling is ineligible to race for 180 days, unless the commission determines that circumstances unavoidably prevented the owner and trainer from making the horse available for sampling.*

- Include a “grace period” where a consumer who was late on a settlement payment could cure the delinquency without penalty.
- Debt collectors expressed concern that the disclosure of consumer rights under the Exempt Income Protection Act is not appropriate here.

• Include a Department approved model agreement.

Section 1.6 Communication through electronic mail:

- Eliminate the requirement that an email address must be secure, since this is difficult to determine.
- Include an opt-out procedure in every electronic communication so that consumers may choose to revoke authorization to communicate by electronic mail.

Section 1.7 Effective date:

- Delay the effective date of the rule to allow additional time for compliance.
- Exempt from the rules all debts placed or sold for collection before the effective date of the rules.

Changes Made to Proposed Rule:

Following a review of the comments, the Department made the following changes to the proposed rule.

The rule was renamed to “Debt collection by third-party debt collectors and debt buyers.”

Section 1.1 Definitions:

• The definition for “charge-off” was added. The Department determined that some information that debt collectors must provide to consumers is inexorably tied to the date of charge-off, not default. Charge-off represents a uniform accounting action in the life of all consumer debts.

• The definition of “collection efforts” was removed, since the term is no longer used in the proposed rule.

• The Department modified the definition of “debt collector” in order to exempt entities that the Department never intended to be subject to the proposed rule. The definition includes any person in a business the principal purpose of which is the collection of any debts, including debt buyers and third-party debt collectors. However, exceptions, primarily taken directly from the FDCPA, were included to clarify the scope of this definition. Based on a recommendation from the Commercial Lawyers Conference of New York, the Department explicitly excludes from the definition of debt collector any person taking collection action relating to or during litigation. This revision makes clear that the proposed rules are intended to target abusive and deceptive non-litigation consumer debt collection practices.

Section 1.2 Required initial disclosures by debt collectors:

• If the consumer pays a debt in full within five days of the initial communication, a debt collector does not need provide a consumer the initial communications required by Section 1.2. Many comments stated that there is no need for such a mailing after a consumer satisfies the debt.

• At the request of consumer advocates and the debt collection industry, the exempt income disclosure was simplified.

• Some documentation must be provided only if the original creditor has charged-off the debt. The required documentation has been revised to reflect this change, such as requiring an itemization of each additional charge or fee accrued from the charge-off of the debt. This change was made to match industry customs of using charge-off as a uniform recordkeeping standard. Further, this will ensure that the information will not be overly burdensome for industry or consumers by excluding an itemization of charges and payments made prior to charge-off.

Section 1.3 Disclosures for debts in which the statute of limitations may be expired:

• This section was revised to more clearly explain to consumers that while the expiration of the statute of limitations on a debt is an affirmative defense, suing to collect on an expired debt violates the FDCPA.

• This section more clearly conveys that while the Department is requiring debt collectors to disclose certain information to consumers, debt collectors can choose to either use the proposed language or draft a disclosure that incorporates the required information.

• Both the industry and consumer advocates requested that the Department remove the warning regarding the potential impact of failure to pay an expired debt on a consumer’s credit score. The concern was that this warning would be threatening to consumers and could, in some cases, be misleading. This disclosure was removed.

Section 1.4 Verification of debts:

• This section was revised to address debt collectors’ concern that the procedures for “verification,” now renamed “substantiation,” left debt collectors unsure of when a consumer was requesting this additional proof of indebtedness. Debt collectors were also concerned that consumers could repeatedly request substantiation. As amended, the rule allows collectors of charged-off debts to treat any dispute as a request for substantiation or provide consumers clear instructions for how to request substantiation in writing. This change provides debt collectors with procedural options to ensure that the collector can definitively determine whether a consumer has made a triggering substantiation request. To prevent abuse, a debt col-

lector must only provide a consumer substantiation of the debt one time pursuant to this Section.

• The revisions also clarify that substantiation must be provided within 60 days of a debt collector receiving a request.

Section 1.5 Debt payment procedures:

• This section was revised after learning that consumers who agree to a debt payment plan may wish to make an initial payment on the phone, and not wait five days before paying. The revision allows the debt collector to accept this first payment and provide the consumer their written contract within five days.

• At the request of consumer advocates and the debt collection industry, the exempt income disclosure was simplified.

Section 1.6 Communication through electronic mail:

• This section was amended to allow electronic communication only if the consumer affirms that the email provided is not an account furnished or owned by the consumer’s employer.

• An opt-out notice to stop electronic communications was not included because this option is required for all commercial electronic communication under federal law.

Section 1.7 Effective date:

• Most of the rules will be effective 90 days after publication in the State Register. Sections 1.2(b) and 1.4(a) will be effective 180 days after publication, to provide debt collectors time to comply.

New York State Gaming Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-28-14-00006-EP

Filing No. 563

Filing Date: 2014-06-27

Effective Date: 2014-06-27

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

Proposed Action: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The Gaming Commission (“Commission”) has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law, issued a Request for Applications (“RFA”) for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the “Act”). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York, completed applications are due to the Gaming Facility Location Board by June 30, 2014. The immediate re-adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted in response to the RFA. Standard rule making procedures would prevent the Commission from commencing the fulfillment of its statutory duties.

Subject: Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.gaming.ny.gov/>): This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission (“Commission”) to prescribe the form of the application for a gaming facility license.

The new Part of the Gaming Commission regulations describes the form

of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant's duty to update its application as necessary, following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 25, 2014.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (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: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. LEGISLATIVE OBJECTIVES: This rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. NEEDS AND BENEFITS: This rule making is necessary to enable the Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of \$1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the \$1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which will occur upon filing.

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

This rule making will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rules prescribe the method and form of the application for a gaming facility license; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant. It is not expected that any small business or local government will apply for a gaming facility license.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

New York Gaming Facility Location Board

EMERGENCY RULE MAKING

Rules Pertaining to Gaming Facility Request for Application and Related Fees and Related Hearings

I.D. No. GFB-21-14-00008-E

Filing No. 564

Filing Date: 2014-06-27

Effective Date: 2014-06-27

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

Action taken: Addition of Parts 600 and 601 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(4), (9) and 1319

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The New York State Gaming Facility Location Board (the "Board") has determined that immediate re-adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Board, which was established by the New York State Gaming Commission ("Commission"), issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in Upstate New York. The immediate re-adoption of these rules is necessary to prescribe required fee information for applicants that plan to submit an application in response to the RFA, due June 30, 2014 and to enable the Board to have hearing procedures in place before any potential public hearing occurs. Standard rule making procedures would prevent the Board from commencing the fulfillment of its statutory duties.

Subject: Rules pertaining to gaming facility request for application and related fees and related hearings.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Text of emergency rule: Subtitle R of Title 9, Executive, of the NYCRR is amended to name such Subtitle "Gaming Facility Location Board" and add new Parts 600 and 601 as follows:

Item 4. Rulemaking

- b. SGC-24-14-00001-EP, Rules Pertaining to Sanctions for the Unlawful Acceptance of Public Assistance Benefits at Certain Facilities (Adoption)**
- c. SGC-24-14-00001-EP, Rulemaking on Restrictions on Acceptance of Public Assistance (Re-Adoption)**



MEMORANDUM

To: ALL COMMISSIONERS

From: Edmund C. Burns

Date: August 13, 2014

Re: Proposed Emergency and Standard Rulemaking for Restrictions on Acceptance of Public Assistance (9 NYCRR §§ 4009.3, 4122.3, 4404, 4500.9, 4822.25, 5113.1, 5113.5, 5113.7, 5113.8 and 5117)

On May 29, 2014, the Commission promulgated emergency rules to implement Part F of Chapter 58 of the Laws of 2014, which, as required by federal law, restricts the acceptance of federal public assistance benefits distributed by the State at designated types of businesses, including liquor stores, adult entertainment establishments, casinos, racetracks, off-track betting facilities and commercial bingo facilities. The legislation became effective May 30, 2014. The Commission also proposed the adoption of these rules as permanent rules. The notice of emergency rulemaking and proposed rulemaking was published in the June 18, 2014 State Register.

No public comment has been received in regard to the notice of proposed rulemaking and the public comment period has ended. The Commission may now consider the rules for permanent adoption. If adopted, the rules would become effective as permanent rules upon publication in the State Register, which could occur at the earliest on September 10, 2014. Therefore, the Commission should further consider the re-adoption of these rules as emergency rules, in order to prevent the rules from expiring while the effective date of the permanent rules is pending.

The text of the proposed rules as published in the State Register is attached.



attachment

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

New York State Gaming Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of Rules Pertaining to Sanctions for the Unlawful Acceptance of Public Assistance Benefits at Certain Facilities

I.D. No. SGC-24-14-00001-EP

Filing No. 448

Filing Date: 2014-05-29

Effective Date: 2014-05-29

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

Proposed Action: Amendment of sections 4009.3, 4122.3, 4500.9, 5113.1, 5113.5, 5113.7 and 5113.8; and addition of sections 4404.18, 4822.25 and 5117.7 to Title 9 NYCRR.

Statutory authority: L. 2014, ch. 58, part F, section 3; Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(1), (19), 235(1), 310 and 520(1); Executive Law, section 435(1)(a) and (d); and Tax Law, sections 1604 and 1617-a(a)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The Commission has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. Part F of Chapter 58 of the Laws of 2014 takes effect on May 30, 2014 and restricts the acceptance of public

assistance benefits in certain facilities, including horse racetracks, off-track horse betting facilities, video lottery facilities and commercial bingo establishments. Section 3 of Part F provides explicitly that “the New York state gaming commission shall be authorized to promulgate regulations on an emergency basis and immediately take such other actions as necessary to implement the provisions of this act.”

The immediate adoption of these rules is necessary to implement sanctions for violations of the law as of the date the law takes effect.

Subject: Implementation of rules pertaining to sanctions for the unlawful acceptance of public assistance benefits at certain facilities.

Purpose: To implement the restrictions and prohibitions contained in part F of chapter 58 of the Laws of 2014.

Text of emergency/proposed rule: Section 4009.3 of Part 4009 of Subchapter A of Chapter I of Subtitle T of Title 9, Executive, of the NYCRR is amended to classify the existing text as subdivision (a) and add a new subdivision (b) as follows:

PART 4009

Pari-Mutuel Operation

§ 4009.3. Sale, exchange of tickets.

(a) No pari-mutuel tickets shall be sold except at regular ticket windows, properly designated by signs, except that tickets may be issued by automated ticket machines or bets may be sold by designated couriers according to procedures approved by the commission. No such tickets shall be exchanged.

(b) Any track conducting pari-mutuel wagering that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission. Such discipline may include one or more of the following actions:

(1) revocation of a license;

(2) suspension of a license;

(3) a fine; or

(4) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

Section 4122.3 of Part 4122 of Subchapter B of Chapter I of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new subdivision (d) as follows:

PART 4122

Pari-Mutuel Wagering

§ 4122.3. Sale of pari-mutuel tickets.

(a) Only one method of selling pari-mutuel tickets shall be used for the sale of tickets on individual heats or races during any racing day.

(b) No pari-mutuel tickets shall be sold except through regular ticket windows properly designated by signs showing type of tickets sold at that particular window, except that tickets may be issued by automated ticket machines, or bets may be sold by designated couriers, according to procedures approved by the commission.

(c) No pari-mutuel selling windows shall be closed nor shall the sale of pari-mutuel tickets be limited or restricted in any way for the purpose of impeding public participation in any wagering pool.

(d) Any track conducting pari-mutuel wagering that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission. Such discipline may include one or more of the following actions:

(1) revocation of a license;

(2) suspension of a license;

(3) a fine; or

(4) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

Part 4404 of Subchapter F of Chapter I of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new section 4404.18 as follows:

PART 4404

Operation of a Corporation

§ 4404.18. *Restrictions on acceptance of public assistance.*

Any facility conducting off-track pari-mutuel wagering that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission. Such discipline may include one or more of the following actions:

- (a) revocation of a license;
- (b) suspension of a license;
- (c) a fine; or
- (d) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

Subdivision (c) of section 4500.9 of Part 4500 of Subchapter G of Chapter I of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new paragraph (6) as follows:

PART 4500

Internet and Telephone Account Wagering

§ 4500.9. Conduct of wagering.

(a) Account wagers shall be transacted through only an account wagering center.

(b) The authorized pari-mutuel wagering entity may accept account wagers via any wired or wireless communications device, including but not limited to wireline telephones, wireless telephones, and the internet subject to applicable laws, rules and the approved plan of operation.

(c) The authorized pari-mutuel wagering entity shall:

(1) require the account holder to provide the account wagering identification number and PIN before an account wager is accepted.

(2) confirm all account wagering transactions before acceptance of an account wager.

(3) verify that the account has sufficient funds to pay for the wager. No wager or portion of wager shall be accepted if the account fails to have sufficient funds to cover the wager.

(4) debit the total amount of the wager from the account immediately after verifying wager.

(5) not accept any account wager if the recording devices are inoperable; and

(6) not cash or accept any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law. Any entity that violates this paragraph shall be disciplined by the commission. Such discipline may include one or more of the following actions:

- (i) revocation of a license;
- (ii) suspension of a license;
- (iii) a fine; or
- (iv) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

Part 4822 of Subchapter E of Chapter II of Subtitle T of Title 9, Executive, of the NYCRR is amended to add a new section 4822.25 as follows:

PART 4822

General Conduct of Bingo in Leased Premises

§ 4822.25. *Restrictions on acceptance of public assistance.*

Any organization conducting bingo in a leased premises, or any lessor of premises for the conduct of bingo, that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission. Such discipline may include one or more of the following actions:

- (a) revocation of a license;
- (b) suspension of a license;
- (c) a fine; or
- (d) issuance of a public or private letter of reprimand to be placed in the file of the licensee.

Sections 5113.1, 5113.5, 5113.7 and 5113.8 of Part 5113 and the title of Part 5113 of Subchapter A of Chapter IV of Subtitle T of Title 9, Executive, of the NYCRR are amended as follows:

PART 5113

Suspensions, [and] Revocations and Other Discipline

§ 5113.1. Suspension and revocation of a license [issued pursuant to the video lottery gaming law] or discipline of a licensee.

(a) Acceptance of a video lottery gaming license or renewal thereof by a licensee constitutes an agreement on the part of the licensee to be bound by these regulations and the policies and procedures of the commission. It is the affirmative responsibility of all licensees to keep informed of the content of all such regulations, policies and procedures and amendments thereto. Any licensee, other than a natural person, may be held accountable for the violations of such licensee's principals or key employees. The commission may suspend or revoke any license issued by the commission for any violation of these regulations.

(b) At the discretion of the commission, a license issued under these regulations may be subjected to suspension or revocation, [or] the renewal of such license may be rejected[,] or a licensee may be fined for any of the following reasons, or any combination thereof:

(1) Any violation of any provision of such license, the act, other applicable law or these regulations;

(2) Failure to comply with instructions of the commission concerning a licensed activity;

(3) Conviction of any:

(i) Felony offense, as such term as defined in [State] Penal Law Section 10.00(5), or an equivalent offense committed in another jurisdiction;

(ii) A misdemeanor related to gambling, gaming, bribery, fraud, or any other offense prejudicial to public confidence in the State lottery;

(4) Failure to file any returns or reports or to keep records or to pay any fee or submit revenue as may be required;

(5) Fraud, deceit, misrepresentation or conduct prejudicial to public confidence in the commission;

(6) Failure to furnish a surety or other bond in such amount as may be required by the commission;

(7) A material change since issuance of the license with respect to any matter required to be considered by the commission;

(8) [Violation of the provisions of the Act and/or these regulations;]

[(9)] Whenever the commission finds that the licensee's experience, character, and general fitness are such that participation in video lottery gaming is inconsistent with the public interest or convenience or for any other reason within the discretion of the commission;

[(10)](9) The failure to notify the commission, in writing, within a reasonable time of any arrest for a misdemeanor or a felony, indictment, or service of a summons, or conviction for any felony whether within or without the State, or within or without the United States, occurring during the term of the license or the renewal thereof.

(c) Prior to commencing a disciplinary proceeding, each licensee shall have the opportunity to correct and/or explain the issue raised by the commission.

(d) Upon suspension or revocation of any license issued pursuant to these regulations, other than a video lottery gaming agent license, the licensee shall surrender such license and any badges for the video lottery gaming facility to the commission. Such licensee shall be banned from entering the video lottery gaming facility for a period of one year or until the license is reinstated, whichever first occurs.

[(d)](e) Upon termination of a video lottery gaming agent's license for any reason, the video lottery gaming agent shall:

(1) Go to such agent's bank on a date designated by the commission for the purpose of rendering a final video lottery gaming accounting of any accounts established by these regulations;

(2) Surrender of the video lottery gaming agent's license and other material provided by the commission.

(3) Upon failure of any video lottery gaming agent to settle accounts on or before the designated date, the commission may exercise such enforcement powers as may be provided for by law. The video lottery gaming agent will provide unrestricted entry onto such agent's premises for the purpose of the removal of all video lottery gaming equipment and incidentals.

* * *

§ 5113.5. Penalties imposed by commission prior to reissuance of license.

The commission may require a person or business entity who is subjected to disciplinary proceedings, or who formerly held a license pursuant to these regulations, to meet certain conditions before reissuing a license to that person or business entity, including but not limited to the following:

(a) restitution of money;

(b) restitution of property;

(c) suspension or revocation of the payment to the video lottery gaming agent of any portion of the video lottery gaming marketing allowance;

(d) making periodic reports to the commission as required; and
 (e) payment of outstanding fines imposed by the commission.
 Any or all of the conditions imposed by the commission pursuant to this Part may be imposed jointly and/or severally.

§ 5113.7. Disciplinary hearings.
 Any disciplinary hearing commenced pursuant to these regulations shall be conducted substantially in accordance with the provisions of section 5000.[7]6 of this subtitle. In the event of a conflict between that section and these regulations, these regulations shall control.

§ 5113.8. Final action by commission.
 After notice and hearing, in the event the commission finds insufficient evidence to support the violations claimed, the commission may find the licensee not guilty of any of the grounds alleged for disciplinary action; in which event the disciplinary proceedings shall be terminated. The commission may, however, find the licensee guilty by a preponderance of the evidence of some or all of the grounds alleged for disciplinary action[.], in which event the commission may take one or more of the following actions:
 (a) revoke the license; [and/or]
 (b) suspend the license for a period of time not to exceed six months; [and/or]
 (c) fine the licensee; or
 (d) issue a public or private letter of reprimand to be placed in the file of the licensee.

This section does not prevent the commission from compromising or settling at any time a formal hearing. Written findings of fact, conclusions of law, and an order must be entered before any decision of the commission shall be considered final.

PART 5117

[Underage Gaming; Alcoholic Beverages; Firearms; Responsible Gaming; Undesirable Persons] Restrictions at Facilities

§ 5117.7. Restrictions on acceptance of public assistance.
 Any video lottery gaming agent that cashes or accepts any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance, as proscribed by section 151 of the Social Services Law, shall be disciplined by the commission pursuant to Part 5113 of this Subchapter.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 26, 2014.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301-7500, (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: Section 3 of Part F of Chapter 58 of the Laws of 2014 authorizes the Gaming Commission to promulgate regulations on an emergency basis and immediately take such other actions as necessary to implement Part F of Chapter 58 of the Laws of 2014.

Racing, Pari-Mutuel Wagering and Breeding Law (“Racing Law”) section 104(1) gives the Gaming Commission general jurisdiction over all gaming activities in the State.

Racing Law section 104(19) authorizes the Gaming Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

Racing Law section 235(1) authorizes the Gaming Commission to make rules regulating the conduct of pari-mutuel betting.

Racing Law section 310 authorizes the Gaming Commission to suspend or revoke licenses granted by it and to impose monetary fines upon those participating in any way in any harness race meet at which pari-mutuel betting is conducted.

Racing Law section 520(1) gives the Gaming Commission general jurisdiction over the operation of all off-track betting facilities within the State and authorizes the Gaming Commission to issue rules and regulations in regard to off-track betting facilities.

Executive Law sections 435(1)(a) and (d) gives the Gaming Commission the authority to supervise the administration of the bingo licensing law, to adopt rules and regulations governing the conduct of bingo and to suspend or revoke licenses relating to the conduct of bingo.

Tax Law section 1604 authorizes the Gaming Commission to operate the lottery and to promulgate rules and regulations governing the operation thereof.

Tax Law section 1617-a (a) authorizes the Gaming Commission to

license the operation of video lottery gaming pursuant to the rules and regulations of the Gaming Commission.

2. LEGISLATIVE OBJECTIVES: The federal Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, 126 Stat. 156, enacted February 22, 2012) requires states to put in place policies and procedures to prevent federal public assistance benefits from being used in any electronic benefits transaction at designated types of businesses such as horse racetracks, off-track horse betting facilities, video lottery facilities and commercial bingo establishments. In response to this requirement, New York State enacted Part F of Chapter 58 of the Laws of 2014, which amends Social Services Law sections 21-a and 151 to restrict the acceptance of federal public assistance benefits distributed by the State at such locations. The legislation becomes effective May 30, 2014. This emergency rule making carries out the legislative objectives of the above-referenced laws by implementing the requirements of Part F of Chapter 58 of the Laws of 2014 as such requirements pertain to facilities regulated by the Gaming Commission.

3. NEEDS AND BENEFITS: This emergency rule making is necessary to enable the Gaming Commission to enforce Part F of Chapter 58 of the Laws of 2014, as directed by the Legislature. The legislation restricts at various facilities the acceptance of federal public assistance benefits distributed by the State and sets forth the sanctions that regulated parties will face if they do not comply. This rule making implements the legislation by establishing a range of possible sanctions for regulated parties that accept federal public assistance benefits in violation of Social Services Law section 151. Such sanctions may include license revocation, license suspension, fines or written reprimands.

The change to section 4009.3 restricts the acceptance of federal public assistance benefits for pari-mutuel wagering at thoroughbred racetracks and outlines potential sanctions. The change to section 4122.3 restricts the acceptance of federal public assistance benefits for pari-mutuel wagering at harness racetracks and outlines potential sanctions. The change to section 4500.9 restricts the acceptance of federal public assistance benefits for internet and telephone wagering and outlines potential sanctions. The addition of section 4404.18 restricts the acceptance of federal public assistance benefits for off-track pari-mutuel wagering and outlines potential sanctions. The addition of section 4822.25 restricts the acceptance of federal public assistance benefits for commercial bingo establishments and outlines potential sanctions.

The changes to sections 5113.1, 5113.5 and 5113.8 make clear that a licensee can face license sanctions or be fined for violations of other applicable laws such as Social Service Law section 151. The change to section 5113.7 corrects an erroneous cross-reference to the section of the Gaming Commission’s regulations governing the conduct of license suspension and revocation hearings. The addition of section 5117.7 restricts the acceptance of federal public assistance benefits at video lottery facilities and outlines potential sanctions. These changes and additions are necessary to enforce Part F of Chapter 58 of the Laws of 2014 and to make clear to regulated parties their obligations under the new law.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: There are no costs to regulated parties who comply with the law. Regulated parties that have not already done so may implement electronic benefit transfer blocking technology at their facilities to assist their compliance with statute. Regulated parties that do not comply with the law will face sanctions that may include fines.

(b) Costs to the regulating agency, the State, and local government: The rules will impose some costs to the Commission to sanction parties that violate the law and to conduct hearings, where necessary. The rules will not impose any additional costs on local government, except that regional off-track betting corporations may implement electronic benefit transfer technology at their facilities to assist their compliance with statute.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Gaming Commission’s experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules are not expected to impose any significant paperwork requirements on regulated parties.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because compliance with Part F of Chapter 58 of the Laws of 2014 is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements. The rules complement federal legislation and rules.

8. ALTERNATIVES: The Gaming Commission is directed to create these rules by Section 3 of Part F of Chapter 58 of the Laws of 2014. Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: The federal Middle Class Tax relief and Job Creation Act of 2012 (Pub. L. 112-96, 126 Stat. 156 enacted February

22, 2012) requires states to restrict the acceptance of public assistance in the manner implemented by Part F of Chapter 58 of the Laws of 2014.

10. **COMPLIANCE SCHEDULE:** The Gaming Commission anticipates that affected parties will be able to achieve compliance with the rules upon their adoption.

Regulatory Flexibility Analysis

1. **EFFECT OF THE RULE:** The rules will affect any party operating horse racetracks, off-track horse betting facilities, video lottery facilities and commercial bingo establishments. Each must comply with Part F of Chapter 58 of the Laws of 2014, as must all regulated parties governed by such law.

2. **COMPLIANCE REQUIREMENTS:** The rules will not impose any compliance requirements on small business or local governments.

3. **PROFESSIONAL SERVICES:** The rules will not require small businesses or local governments to obtain professional services.

4. **COMPLIANCE COSTS:** Regulated parties that have not already done so may implement electronic benefit transfer blocking technology at their facilities to assist their compliance with statute. Regulated parties that do not comply with the law will face sanctions that may include fines.

5. **ECONOMIC AND TECHNOLOGICAL FEASIBILITY:** The rules will not impose any technological requirements on small businesses or local governments, but regulated parties that have not already done so may implement electronic benefit transfer blocking technology at their facilities to assist their compliance with statute.

6. **MINIMIZING ADVERSE IMPACT:** The rules will not have an adverse economic impact on small businesses or local governments.

7. **SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:** Small business and local government may comment on the proposed rules during the public comment period.

8. In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rule making does not include a cure period because the Gaming Commission is promulgating this regulation to implement Part F of Chapter 58 of the Laws of 2014.

Rural Area Flexibility Analysis

A rural flexibility analysis is not attached because the rules do not impose any adverse impact or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The rules apply uniformly throughout the State to any party operating horse racetracks, off-track horse betting facilities, video lottery facilities and commercial bingo establishments.

Job Impact Statement

The Gaming Commission has no reason to believe that these rules will have any adverse impact on any jobs or employment opportunities. The rules prescribe sanctions for a regulated party that does not comply with statute. The rules will not impact jobs and employment and a full Job Impact Statement is not necessary.

Department of Health

NOTICE OF ADOPTION

Hearing Aids

I.D. No. HLT-08-14-00003-A

Filing No. 458

Filing Date: 2014-06-03

Effective Date: 2014-06-18

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

Action taken: Amendment of section 505.31(h) of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; Social Services Law, sections 363-a and 365-a(2)

Subject: Hearing Aids.

Purpose: To streamline electronic billing and establish maximum reimbursable amounts based on an average products cost for hearing aids.

Text or summary was published in the February 26, 2014 issue of the Register, I.D. No. HLT-08-14-00003-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.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

NYS Medical Indemnity Fund

I.D. No. HLT-12-14-00014-A

Filing No. 457

Filing Date: 2014-06-03

Effective Date: 2014-06-18

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

Action taken: Addition of Subpart 69-10 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2999-j

Subject: NYS Medical Indemnity Fund.

Purpose: To provide the structure within which the NYS Medical Indemnity Fund will operate.

Substance of final rule: As required by section 2999-j(15) of the Public Health Law ("PHL"), the New York State Commissioner of Health, in consultation with the Superintendent of Financial Services, has promulgated these regulations to provide the structure within which the New York State Medical Indemnity Fund ("Fund") will operate. Included are (a) critical definitions such as "birth-related neurological injury" and "qualifying health care costs" for purposes of coverage, (b) what the application process for enrollment in the Fund will be, (c) what qualifying health care costs will require prior approval, (d) what the claims submission process will be, (e) what the review process will be for claims denials, (f) what the review process will be for prior approval denials, and (g) how and when the required actuarial calculations will be done.

The application process itself has been developed to be as streamlined as possible. Submission of (a) a completed application form, (b) a signed release form, (c) a certified copy of a judgment or court-ordered settlement that finds or deems the plaintiff to have sustained a birth-related neurological injury, (d) documentation regarding the specific nature and degree of the applicant's neurological injury or injuries at present, (e) copies of medical records that substantiate the allegation that the applicant sustained a "birth-related neurological injury," and (f) documentation of any other health insurance the applicant may have are required for actual enrollment in the Fund.

The parent or other authorized person must submit the name, address, and phone number of all providers providing care to the applicant at the time of enrollment for purposes of both claims processing and case management. To the extent that documents prepared for litigation and/or other health related purposes contain the required background information, such documentation may be submitted to meet these requirements as well, provided that this documentation still accurately describes the applicant's condition and treatment being provided.

Those expenses that will or can be covered as qualifying health care costs are defined very broadly. Prior approval is required only for very costly items, items that involve major construction, and/or out of the ordinary expenses. Such prior approval requirements are similar to the prior approval requirements of various Medicaid waiver programs and to commercial insurance prior approval requirements for certain items and/or services.

Reviews of denials of claims and denials of requests for prior approval will provide enrollees with full due process and prompt decisions. Enrollees are entitled to a conference with the Fund Administrator or his or her designee and a review, which will involve either a hearing before or a document review by a Department of Health hearing officer. In all reviews, the hearing officer will make a recommendation regarding the issue and the Commissioner or his designee will make the final determination. An expedited review procedure has also been developed for emergency situations.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 69-10.4(a)(9), 69-10.10(b)(5), (e)(2)(iii), (v) and 69-10.18(b).

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.state.ny.us

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 RIS, RFA, RAFA and JIS.

Assessment of Public Comment

The agency received no public comment.

Item 5. Adjudications

a. In the Matter Cash Me Out

Item 5. Adjudications

b. In the Matter of Hurrikanekeelynora