7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers:

Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts:

As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than $5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation:

The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

Department of Health

NOTICE OF ADOPTION

Statewide Health Information Network for New York (SHIN-NY)

I.D. No. HLT-44-15-00020-A

Filing No. 219

Filing Date: 2016-02-23

Effective Date: 2016-03-09

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

Action taken: Addition of Part 300 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206(1), (18-a), (b), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712

Subject: Statewide Health Information Network for New York (SHIN-NY).

Purpose: To establish the Statewide Health Information Network for NY (SHIN-NY).

Substance of final rule: Public Health Law § 206(18-a)(d) gives the Department broad authority to promulgate regulations, consistent with

federal law and policies, that govern the Statewide Health Information Network for New York (SHIN NY).

This regulation makes clear that, consistent with 42 USC § 17938, Qualified entities (QEs) may, without patient authorization, make patient information available among SHIN-NY participants or other entities otherwise serving the patient so long as the QEs enter into and adhere to participation agreements that comply with federal requirements under HIPAA and 42 CFR Part 2 for business associates and qualified service organizations. This regulation specifies consent requirements to access patient information made available through the QEs. This regulation incorporates legal requirements related to disclosure of patient information without consent, as well as laws that specifically authorize disclosure of patient information for health care purposes, including public health and health oversight purposes, without the type of written, signed authorization that contains all of the elements that would be required for a health care provider to get permission to disclose patient information to a third party for purposes other than health care.

In order to participate in the SHIN-NY, regional health information organizations will need to be certified as QEs by the Department and satisfy certification requirements on an ongoing basis under the procedures established by this regulation.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 300.2 and 300.3(a).

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

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

Changes made to the last published rule do not necessitate revision to the previously published summary of the RIS, RFA, RAFA and JIS.

Assessment of Public Comment

Comment: One commenter recommended that there be greater transparency in how SHIN-NY policy guidance is developed and that the Department should publish qualified entity performance data.

Response: The regulation will continue the statewide collaboration process. Additionally, the Department intends to publish information on the performance of the SHIN-NY, qualified entities, participant adoption, and usage.

Comment: One commenter recommended that the Department recognize a state designated entity in the regulation.

Response: Although the regulation does not mention a state designated entity, the regulation does not preclude the Department from designating one in the future.

Comment: Two commenters expressed concern that the regulation does not require the Department to carry out specific activities to establish the SHIN NY or issue SHIN NY policy guidance.

Response: Section 300.2 of the proposed regulation stated that the Department "may" carry out activities to establish the SHIN-NY, and section 300.3 of the proposed regulation stated that the Department "may" establish SHIN NY policy guidance. The final regulation changes "may" to "shall" in both 300.2 and 300.3 to clarify that the Department will carry out activities to establish the SHIN NY and issue policy guidance. The SHIN NY policy guidance under section 300.3(b) of the regulation is posted on the Department's website at this link: http://www.health.ny.gov/technology/regulations/shin-ny/.

Comment: Multiple commenters stated that qualified entities should be required to train providers and educate the public about the SHIN-NY and, specifically, minor consent information in the SHIN-NY.

Response: The Department recognizes the need for qualified entities to train their participants on the functionality of the SHIN-NY, SHIN-NY policies, and requirements to ensure privacy and confidentiality of patient information. The SHIN-NY policy guidance specifies appropriate training and education procedures.

Comment: One commenter was concerned that the regulation would allow a previous consent, given through the Medicaid enrollment process, to serve as prior consent under section 300.5(c)(1) of the regulation, thereby allowing Medicaid managed care health plans to access data via the SHIN-NY.

Response: The Access NY Health Care health insurance application form (DOH-4220all) includes conditions for receiving public welfare benefits under Title XIX of the Social Security Act (Grants to States for Medical Assistance Programs). The Department is currently evaluating whether this would serve as prior consent under section 300.5(c)(1).

Comment: Some commenters stated that the proposed regulation should require that qualified entities withhold information from the SHIN NY unless a patient consents to upload information to the SHIN-NY.

Response: Under section 300.5(a) of the regulation, qualified entity participants "may, but shall not be required to, provide patients the option to withhold patient information, including minor consent patient information, from the SHIN NY." Thus, providers will be able to offer the option for patients to withhold patient information as necessary and appropriate.

Comment: Some commenters suggested that the Department should include a section on patient rights.

Response: Although the regulation does not have a specific section labeled "patient rights," section 300.4(a)(8) requires qualified entities to provide patients with access to patient information and section 300.4(a)(9) requires qualified entities to provide an accounting of access by qualified entity participants. The regulation also incorporates by reference patient rights in federal and state law.

Comment: Some commenters suggested that the regulations do not go far enough to restrict access to information derived from minor consented services.

Response: Qualified entities and the SHIN-NY policy committee, through the statewide collaboration process, have identified technical and policy solutions that will allow those providing minor consented services to access patient data based on a minor's consent. SHIN-NY policies also ensure that minor consented services are kept confidential, through the implementation of technology and education of providers who might access data from an encounter when a patient receives minor consented services. Section 300.5(a) allows qualified entity participants to provide patients receiving minor consented services the option to withhold patient information from the SHIN-NY. Also, a qualified entity participant may not may not disclose minor consent patient information to a parent or guardian without the minor's authorization.

Comment: One commenter suggested that the SHIN-NY consent model is burdensome and decreases participation in the SHIN-NY.

Response: The SHIN-NY consent model has been structured in a way to adhere to all relevant federal and state laws about data sharing, including regulations that govern the sharing of data from alcohol and substance abuse treatment facilities, at 42 CFR Part 2. The Substance Abuse and Mental Health Services Administration (SAMHSA) proposed rule that would amend 42 CFR Part 2 (81 Fed. Reg. 6988-7024, February 9, 2016) may allow implementation of a less burdensome consent model in the future.

Comment: Multiple commenters cited the need to segment or segregate data as a means to control what data may be accessed by qualified entity participants.

Response: Section 300.5(a) allows qualified entity (QE) participants to provide patients the option to withhold patient information from the SHIN-NY. If implemented by a QE participant, this would allow a patient to request that some or all of their information not be available on the SHIN-NY.

Comment: Some commenters suggested that public health authorities should not be able to access patient data without consent.

Response: HIPAA allows public health authorities and others responsible for ensuring public health and safety to have access to protected health information in order to carry out their public health mission. See 42 USC § 1320d-7(b). The HIPAA Privacy Rule also permits covered entities to disclose protected health information to public health authorities without a written authorization for public health activities authorized by law. Therefore, the regulation and the SHIN-NY policy guidance allow public health access for public health activities authorized by law.

Comment: Some commenters stated that the proposed regulation contains an overly broad authorization of disclosure to a health care provider without patient consent in an emergency.

Response: "Break the Glass," or emergency access to patient information, is a significant component of the SHIN-NY and current patient consent model. Requirements outlined for audit in section 6.1 of the privacy and security SHIN-NY policy guidance under section 300.3(b)(1) of the regulation provide for the maintenance of audit logs. In the case of "break the glass" access, the audit logs contain information on the type of patient information accessed and the nature of the emergency as attested by the practitioner.

Comment: Some commenters suggested there was ambiguity in the requirement of notice for community-wide consent under section 300.5(b)(1)(i)(b) of the regulation and that it should be clarified to describe exactly what the notice should consist of.

Response: The Department intends that patients who sign a community-wide consent form have the opportunity to receive a notification if the patient chooses to receive one. The Department emphasizes that qualified entities have the flexibility to determine the form and manner in which that notice is provided.

Comment: One commenter suggested that some providers who provide sensitive services and minor consented services should be exempt from the requirement to connect their facilities given that data segmentation is not widely available.

Response: Section 300.6(b) of the regulation gives the Commissioner the ability to waive requirements under extenuating circumstances. Sec-

tion 300.5(a) of the regulation allows, but does not require, health care facilities subject to the regulation to limit the release of health information at the request of the patient. The Department recognizes that some providers may not have technology available through their electronic health record to support providing patients with the option to withhold patient information, and it may be too expensive to implement this. Providers in this situation could request a waiver under section 300.6(b).

Comment: One commenter recommended that the exemption in section 300.6(b) of the regulation should specifically exempt long-term/post-acute care facilities from the requirement to connect to the SHIN-NY.

Response: All health care facilities under Public Health Law § 18(1)(c) that use a certified electronic health record under the federal HITECH Act are required to connect to the SHIN-NY, including long term/post-acute care facilities. Such facilities may apply for a waiver under section 300.6(b).

Comment: One commenter appreciated that the Department is encouraging non-regulated entities to participate in the SHIN-NY and encourages the Department to align data contribution requirements with other Department programs such as the Delivery System Reform Incentive Payment (DSRIP) program.

Response: The true value of the SHIN-NY will not be achieved until all providers are connected to the network. The Department is working to align data contribution requirements with multiple programs across the Department.

Division of Human Rights

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Discrimination Based on Relationship or Association

I.D. No. HRT-10-16-00019-P

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

Proposed Action: Addition of section 466.14 to Title 9 NYCRR.

Statutory authority: Executive Law, section 295.5

Subject: Discrimination based on relationship or association.

Purpose: To clarify it is unlawful to discriminate because of relationship or association with members of a protected class.

Text of proposed rule: A new Section 466.14 is added to read as follows:

466.14 Discrimination based on an individual's relationship or association with members of a protected class.

(a) Statutory Authority. Pursuant to N.Y. Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law).

(b) The Human Rights Law Section 297.1 permits "[a]ny person claiming to be aggrieved by an unlawful discriminatory practice" to file a verified complaint.

(c)(1) Where the term "unlawful discriminatory practice" is used in the Human Rights Law, it shall be construed to prohibit discrimination against an individual because of that individual's known relationship or association with a member or members of a protected category covered under the relevant provisions of the Human Rights Law.

(2) To prove a claim of discrimination based on a known relationship or association, complainants must establish they are aggrieved by an unlawful discriminatory practice by showing they have been be subjected to an adverse action as specified in relevant provisions of the Human Rights Law because of their known relationship or association with a member or members of a protected category covered under the relevant provisions of the Human Rights Law.

Text of proposed rule and any required statements and analyses may be obtained from: Edith Allen, Administrative Aide, Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, (718) 741-8398, email: eallen@dhr.ny.gov

Data, views or arguments may be submitted to: Caroline Downey, General Counsel, Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, (718) 741-8402, email: cdowney@dhr.ny.gov

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

Regulatory Impact Statement

Statutory authority: Pursuant to Executive Law, section 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the Executive Law, article 15 (Human Rights Law).

Legislative objectives: To clarify that it is an unlawful discriminatory practice under the Human Rights Law to discriminate against individuals because of their relationship or association with members of a protected class.

Needs and benefits: There is long-standing precedent supporting anti-discrimination protection under the Human Rights Law (HRL) to individuals who are discriminated against because of their association with members of a protected class. For example, in Dunn v. Fishbein, 123 AD2d 659 (2nd Dept. 1986), where a landlord denied an apartment to two roommates, one white and one black, the court held that in order to have standing under the HRL, the prospective tenants "must show that they have suffered an injury and that they fall within a zone of interest which the statute protects." Id at 660. In reversing the lower court's dismissal, the Court stated that a jury could find that the refusal to rent to the roommates was motivated by racial bias and that the fact that one of the roommates was white was irrelevant.

This is similar to protection that has been found under Title VII of the Civil Rights Act of 1964. In 2011, the Supreme Court of the United States unanimously held that a person who has been retaliated against by his employer because of his relationship with another person has standing as a "person aggrieved" under Title VII. In Thompson v. North American Stainless, LP, 562 U.S. 170 (2011), the plaintiff filed a retaliation claim, alleging he was terminated because his fiancée, who worked for same employer, filed a sex discrimination charge with the Equal Employment Opportunity Commission. The Supreme Court held the plaintiff had standing to sue as a person aggrieved under Title VII, which permits "a civil action [to] be brought. . . by the person claiming to be aggrieved" 42 USC § 2000e-5(f)(1). The Supreme Court found that this provision incorporates a "zone of interest" test and thus "enable[s] suit by any plaintiff with an interest arguably sought to be protected by the statute." The HRL similarly provides that "[a]ny person claiming to be aggrieved by an unlawful discriminatory practice may. . . sign and file with the division a verified complaint." § 297(1). The "zone of interest" analysis applied by the Supreme Court in Title VII cases is equally applicable to claims brought pursuant to the HRL, permitting association discrimination claims for all bases covered under the HRL.

Over a quarter century after Title VII, the Americans with Disabilities Act (ADA) was enacted. This law specifically prohibits discrimination "because of the known disability of an individual with whom the qualified individual is known to have a relationship or association" 42 USC § 12112(b)(4). While this provision recognizes the law as it has developed with respect to association, it clearly does not diminish the association protections found in Title VII, nor can it have impact on the well-developed law concerning association protections of the HRL. Even though the disability discrimination protections of the HRL long predate the ADA, some lower courts have dismissed claims alleging discrimination based on association with a person with a disability under the HRL because the HRL lacks the explicit association language found in the ADA. This regulation will clarify this specific situation, and make it clear to all New Yorkers that they have the right to rent or buy residential property, land or commercial space, to gain and retain employment, and to patronize all public accommodations regardless of the race, color, creed, national origin, sexual orientation, gender identity, disability or other protected characteristic of their family members, associates or clients.

It is important that all New Yorkers know, for example, that a mother seeking housing may not be denied an apartment because of the race or disability of her child. A renter may not be evicted or denied equal terms because of the race, creed, national origin, sexual orientation or gender identity of the renter's friends who visit the apartment. An individual who provides services to persons in need may not be discriminated against because of the creed or national origin of his or her clients, with regard to renting a residential apartment, or renting office space for providing those services. A medical practice providing health care services specializing in HIV/AIDS-related medical conditions cannot be denied commercial space, or given unequal terms or condition of a lease, because of the nature of the clients' disabilities. These regulations will apply to areas protected under the HRL, including housing, public accommodations, employment, access to educational institutions and credit.

Costs:

a. costs to regulated parties for the implementation of and continuing compliance with the rule: No new costs are anticipated for regulated parties. The implementation of this rule clarifies the practice and policy of the State Division of Human Rights with regard to complaints of discrimination based on association.

b. costs to the agency, the state and local governments for the implementation and continuation of the rule: It is anticipated that any costs to the State Division of Human Rights due to increased filings because of increased awareness of the protections described, and for continued