

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

Small businesses will not incur any significant compliance costs associated with this rule. The Department publishes cease and desist lists on its website at no cost. Businesses who desire a hard copy of the lists may notify the Department and receive a copy of the lists by mail for a cost of \$10.00.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with this rule. Cease and desist lists have been created in past years, including a current zone within Kings County, and the Department finds no reason to believe the businesses will not be able to comply with these requirements again.

6. Minimizing adverse impact:

The Department did not identify any alternative that would provide relief for homeowners, comply with Chapter 581 of the Laws of 2021, and, at the same time, be less restrictive and less burdensome on the solicitation activities. Consideration was given to expanding the proposed zone to neighboring community boards or all of Kings County, but the Department determined that the record was not developed sufficiently to support such increased zones. For example, many community boards within Brooklyn reported, for the entire board, fewer than 20 complaints from homeowners of unwanted, intense, or repeated solicitations. It is noted, that while NY RPL Section 442-h permits the Department to investigate this issue further and perhaps create a new zone or expand the proposed zone in the future, such an option does not appear to be a reasonable alternative at this time.

7. Small business participation:

Prior to proposing this rule, the Department held two public hearings that included speakers on behalf of small business interests. In addition, the Department has received and considered a statement submitted by the New York State Association of REALTORS®, Inc., a professional organization representing many small businesses and licensed professionals.

Additionally, the Department continued to allow for small business participation after its public hearings by keeping the regulatory record open. Finally, publication of the rule in the State Register will also provide additional notice to interested parties; additional comments will be received and considered by the Department during the official comment period for this proposed rule.

8. Compliance schedule:

The proposed cease and desist zone is expected to become effective on July 1, 2023 but the Department is also providing a cure period for those impacted by the rule to comply. This time will also be used to allow homeowners sufficient time to file their owner's statements with the Department, and for the Department to publish the list of homeowners who do not wish to be solicited.

9. Cure period:

The Department is providing a cure period of 90 days following the adoption and effective date of the final rule in order to permit those impacted by the rule to obtain any lists published by the Department and to adjust their business practices accordingly. After such 90-day cure period, any business or individual subject to this rule who solicits a homeowner that has filed a statement with the Department will be subject to appropriate action pursuant to Article 12-A of the New York Real Property Law and the regulations promulgated thereunder.

Rural Area Flexibility Analysis

1. Effect of rule:

This rule does not apply to rural areas, rather it applies only to a defined geographic area within Kings County (i.e., Brooklyn, NY).

2. Compliance requirements:

This rule, which applies only in a defined area within Kings County, does not impose any reporting or recordkeeping requirements on businesses located within rural areas.

3. Professional services:

Professional services are not needed to comply with this rule.

4. Compliance costs:

The rule does not impose any costs on rural areas.

5. Minimizing adverse impact:

Insofar as the rule does not impose any costs on rural areas, no alternatives to minimize adverse impacts on rural areas were considered by the Department of State.

6. Rural area participation:

Insofar as the rule does not apply in rural areas, rural area participation was not actively solicited by the Department of State.

Job Impact Statement

As is evident by the nature of this rulemaking, this proposal will not have a substantial adverse impact on jobs and employment opportunities. The rule prohibits real estate professionals from soliciting real estate listings

from residents of a defined geographic zone who have notified the Department of State that they do not wish to be solicited. Real estate professionals will remain free to solicit other residents within the defined zone and engage in real estate transactions within and outside of the defined geographic area. Similar rules have been promulgated in the past without adversely impacting job opportunities. A zone already exists within Brooklyn and the Department has received no evidence that the same has had any adverse impacts on jobs. Accordingly, for the reasons expressed above, this rule will not adversely impact jobs and employment opportunities.

Workers' Compensation Board

NOTICE OF ADOPTION

Pharmacy Networks

I.D. No. WCB-26-22-00002-A

Filing No. 933

Filing Date: 2022-11-07

Effective Date: 2022-11-23

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

Action taken: Amendment of section 440.8 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117 and 141

Subject: Pharmacy networks.

Purpose: To require carriers to notify pharmacies when there is a network.

Text or summary was published in the June 29, 2022 issue of the Register, I.D. No. WCB-26-22-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Schenectady, NY 12305, (518) 486-9564, email: regulations@wcb.ny.gov

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required because the changes made to the last published rule do not necessitate revision to the previously published documents. These changes do not affect the meaning of any statements in the documents.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2025, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

During the public comment period, the Board received 12 comments, including a form letter from 15 individuals.

The Board received 15 copies of a form letter objecting to the proposal as a whole with no specific objections and no suggestions in lieu of the proposal. The Board has made no changes in response to this form letter.

The Board received several comments that the change will negatively impact injured workers, cause delays in the system and is unnecessary due to the Medical Treatment Guidelines and medical portal. Providing notice to non-network pharmacies and specifying how payments should be made to these pharmacies will not impact the flow of medication to injured workers. Accordingly, no changes were made as a result of these comments.

Another comment from a pharmacy network requested specific language changes to the proposal that would eliminate the need to notify the non-network pharmacy. No change was made as a result of this comment.

Section 13-o of the Workers' Compensation Law (WCL) required the Chair to adopt a pharmaceutical fee schedule, and section 13(i) of the WCL allows a carrier to contract with a pharmacy to provide prescribed medicine to claimants. When the pharmacy fee schedule was first adopted in 2012, there was no provision for how carriers would notify pharmacies of the existence of this contract requiring use of specific pharmacies. The feedback the Board received was that this was unfair to the pharmacies in practice because the pharmacy did not know there was a network, and when they supplied medication to injured workers, the non-network pharmacy was required to be paid at the network rate.

The regulations (section 440.8) added a paragraph requiring notice to the claimant and pharmacy to alleviate the problems caused by this lack of notice. Over the years, almost every carrier had a pharmacy network in place and has for years, so the Board removed this paragraph during updates for the OnBoard: Limited Release process, believing that this notice was no longer necessary since the carrier network pharmacy contracts have been settled. However, the Board received feedback that pharmacies are not receiving notice of networks from carriers, and thus there was no mechanism to provide for payment to out-of-network pharmacies or non-payment when proper notice has been made. Accordingly, the Board proposed this amendment to restore the exact language that previously appeared in this section of the regulation. This protects the non-network pharmacy as well as the carrier by requiring notice and if failure to provide notice, they must pay at the pharmacy fee schedule rate, not the network rate. Therefore, no change has been made in response to these comments.

A comment from an association objected to the proposal, opining that it would eliminate injured workers' access to specialized pharmacies that specialize in the PAR system. All medication for prior authorization requests must come from the prescriber's office, so pharmacies are not required to specialize in the PAR process, as the requests and the prescriptions come from the prescriber's office. No change has been made in response to this comment.

The Board received a comment from an injured worker opposing any restrictions on their pharmacy options. The statute already allows a carrier to contract with a pharmacy, and this regulation simply restores language about notice of such a network, no change has been made in response to this comment.

Two comments opined that the proposal expressly nullifies the Third Department Rivera case, and the Liebman case as well. These cases were based on situations that arose before the final regulation was adopted by the Board, including the section the Board proposes be restored, so no change has been made in response to these comments.

The Board received a comment from a company supporting the proposal.

Changes Made: None.

**HEARINGS SCHEDULED
FOR PROPOSED RULE MAKINGS**

Agency I.D. No.	Subject Matter	Location—Date—Time
Environmental Conservation, Department of		
ENV-45-22-00021-P	Adding Aerosol Cans and Paint to NYS Universal Waste Rule	<p>Virtual via Webex—January 11, 2023, 2:00 p.m.</p> <p>Instructions on how to “join” the hearing webinar and provide an oral statement will be published on the Department’s proposed regulations webpage for 6 NYCRR Part 370, Part 371, Part 373, Part 374, and Part 376 by November 9, 2022. The proposed regulations webpage for 6 NYCRR Part 370, Part 371, Part 373, Part 374, and Part 376 may be accessed at: https://www.dec.ny.gov/regulations/proregulations.html.</p> <p>Persons who wish to receive the instructions by mail or telephone may call the Department at (518) 402-9003. Please provide your first and last name, address, and telephone number and reference the 6 NYCRR Part 370, Part 371, Part 373, Part 374, and Part 376 public comment hearing.</p> <p>The Department will provide interpreter services for hearing impaired persons, and language interpreter services for individuals with difficulty understanding or reading English, at no charge upon written request submitted no later than Friday, December 30, 2022. The written request must be addressed to ALJ Molly McBride, NYS DEC Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233-1550 or emailed to ALJ Molly McBride at ohms@dec.ny.gov.</p>
ENV-46-22-00004-P	Chemical Bulk Storage (CBS)	<p>Webinar—January 18, 2023, 3:00 p.m.</p> <p>Department of Environmental Conservation (DEC) will hold a public comment hearing on proposed regulations 6 NYCRR Parts 597, 598, and 613 at: 3:00 p.m. on January 18, 2023, via electronic webinar. These regulations were proposed regulations and previously noticed in the NYS Register, Vol XLIII, Issue 24 on June 16, 2021. They are being re-noticed to comply with regulatory timelines. Comments received during the 6/4/21 - 12/6/21 comment period have been recorded and will be included in the response to comments.</p>