

Pricing & Volume Data	Cost Estimates		
	Downstate	Upstate	Statewide Average
Offsite Visits			
Subsequent Hospital Care	\$62.73	\$55.19	\$58.96
Psychotherapy Services			
Group Psychotherapy	\$34.86	\$30.81	\$32.84
2004 FQHC Visit Volume	1,894,864		
Volume Increase Assumptions			
Group Therapy Increase = 10%			
2004 FQHC Volume.			
Off-site Visit Increase = 1%			
Increase Over 2004 FQHC Volume			
Cost to the Department of Health:			
Total			\$7,339,945

This represents a permanent filing of regulations already in effect. There will be no additional costs to the Department.

**Local Government Mandates:**  
This amendment will not impose any program service, duty or responsibility upon any county, city, town, village school district, fire district or other special district.

**Paperwork:**  
This amendment will increase the paperwork for providers only to the extent that providers will bill for social work services.

**Duplication:**  
This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

**Alternatives:**  
Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for off-site primary care services and the services of certified social workers for both individual and group psychotherapy. In light of this federal requirement, no alternatives were considered.

**Federal Standards:**  
This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

**Compliance Schedule:**  
The proposed amendment will become effective upon filing with the Secretary of State.

**Regulatory Flexibility Analysis**

**Effect on Small Businesses and Local Governments:**  
No impact on small businesses or local governments is expected.

**Compliance Requirements:**  
This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

**Professional Services:**  
No new professional services are required as a result of this proposed action. These changes will bring our regulations into compliance with the State Education Department’s (SED) new standards for social worker licensure.

**Compliance Costs:**  
This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

**Economic & Technological Feasibility:**  
DOH staff has had conversations with the National Association of Social Workers (NASW), UCP, and CHCANYS concerning the interpretation of the current regulation as well as proposed changes to the existing regulation. Although some systems changes will be necessary to ensure that payment is made only to FQHCs, the proposed regulation will not change the way providers bill for services, and thus there should be no concern about technical difficulties associated with compliance.

**Minimizing Adverse Impact:**  
There is no adverse impact.

**Opportunity for Small Business Participation:**  
Participation is open to any FQHC that is certified under Article 28 of the Public Health Law, regardless of size, to provide individual psychotherapy services by certified social workers. Any FQHC, regardless of size, may participate in providing off-site primary care services as well as on-site group psychotherapy services by certified social workers, a licensed psychiatrist or psychologist.

**Rural Area Flexibility Analysis**

**Types and Estimated Number of Rural Areas:**  
This rule will apply to all Article 28 clinic sites in New York that have been designated by the Centers for Medicare and Medicaid Services (CMS) as Federally Qualified Health Centers. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

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

No new reporting, recordkeeping or other compliance requirements and professional are needed in a rural area to comply with the proposed rule.

**Compliance Costs:**  
There are no direct costs associated with compliance.

**Minimizing Adverse Impact:**  
There is no adverse impact.

**Opportunity for Rural Area Participation:**  
The Department has had conversations with the National Association of Social Workers Association (NASW), UCP, and CHCANYS to discuss Medicaid reimbursement for social work services and the impact of this new rule on their constituents. These groups and associations represent social workers and clinic providers from across the State, including rural areas.

**Job Impact Statement**

**Nature of Impact:**  
It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

**Categories and Numbers Affected:**  
There are almost 1000 Article 28 clinics of which approximately 58 are FQHCs, FQHC look-alikes, and rural health clinics.

**Regions of Adverse Impact:**  
This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic and that has been designated by the Centers for Medicare and Medicaid Services (CMS) as a Federally Qualified Health Center.

**Minimizing Adverse Impact:**  
The Department is required by federal rules to reimburse FQHCs for the provision of primary care services, including clinical social work services, based upon the Center’s reasonable costs for delivering covered services.

**Self-Employment Opportunities:**  
The rule is expected to have no impact on self-employment opportunities since the change affects only services provided in a clinic setting.

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## Division of Housing and Community Renewal

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Rent Stabilization Code (RSC) and Emergency Tenant Protections Regulations (TPR)**

**I.D. No.** HCR-26-08-00015-P

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

**Proposed action:** Amendment of Parts 2504 and 2524 of Title 9 NYCRR.

**Statutory authority:** Rent Stabilization Law, section 26-511(b); and Emergency Tenant Protection Act, section 10

**Subject:** Rent Stabilization Code (RSC) and Emergency Tenant Protection Regulations (TPR).

**Purpose:** To clarify demolition standards and to revise the stipend methodology.

**Public hearing(s) will be held at:** 10:00 a.m. on Aug. 12, 2008 at 22 Reade St., 1st Fl., New York, NY; 10:00 a.m. on Aug. 12, 2008 at 1550 Franklin Ave., Mineola, NY; and 10:00 a.m. on Aug. 12, 2008 at 75 S. Broadway, White Plains, NY.

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

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

**Text of proposed rule:** The Rent Stabilization Code, as amended and adopted pursuant to the powers granted to the Division of Housing and Community Renewal by section 26-511(b) of the Administrative Code of the City of New York, as recodified by Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.0[b]), as amended by Laws of 1985, Chap. 888, section 2), and section 26-518(a) of such Code, as recodified by Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.1[a], as added by Laws of 1985, Chap. 888, section 8), is amended to read as follows:

#### PART 2524 EVICTIONS

##### Section 1

Subparagraph (i) of paragraph (2) of subdivision (a) of Section 2524.5 of this Part is amended to read as follows:

(i) The owner seeks to demolish the building. Until the owner has submitted proof of [it's] its financial ability to complete such undertaking to the DHCR, and plans for the undertaking have been approved by the appropriate City agency, an order approving such application shall not be issued. *For purposes of this subparagraph, demolition shall mean, at a minimum, the complete gutting of all interior space in the building from the ground floor and above and including the removal of the building's roofs and of all internal building systems. However, a demolition under this subparagraph shall not require the removal of the outer walls and structural supports of a building.*

##### Section 2

Clause (a) of subparagraph (ii) of paragraph (2) of subdivision (a) of Section 2524.5 of this Part is amended to read as follows:

(a) The DHCR shall require an owner to pay all reasonable moving expenses and afford the tenant a reasonable period of time within which to vacate the housing accommodation. If the tenant vacates the housing accommodation on or before the date provided in the DHCR's final order, such tenant shall be entitled to receive all stipend benefits pursuant to clause (b) of this subparagraph. In addition, if the tenant vacates the housing accommodation prior to the required vacate date, the owner may also pay a stipend to the tenant that is larger than the stipend designated in [a demolition stipend chart to be issued pursuant to an operational bulletin authorized by section 2527.11 of this Title] *subclause (3) of clause (b) of this subparagraph*. However, at no time shall an owner be required to pay a stipend in excess of the stipend set forth in [such schedule] *subclause (3) of clause (b) of this subparagraph*. If the tenant does not vacate the housing accommodation on or before the required vacate date, the stipend shall be reduced by one sixth of the total stipend for each month the tenant remains in occupancy after such vacate date.

##### Section 3

Subclause (3) of clause (b) of subparagraph (ii) of paragraph (2) of subdivision (a) of Section 2524.5 of this Part is amended to read as follows:

(3) pay the tenant a stipend which shall be the difference between the tenant's current rent and [an amount calculated using the demolition stipend chart, at a set sum per room per month multiplied by the actual number of rooms in the tenant's current housing accommodation, but no less than three rooms. This difference is to be multiplied by 72 months] *the mean per room rent registered pursuant to Part 2528 of this Code for housing accommodations in the zip code in which the tenant currently resides, plus twenty percent, with said difference multiplied by 72 months.*

The Emergency Tenant Protection Regulations, as promulgated and adopted by the Division of Housing and Community Renewal pursuant to the Emergency Tenant Protection Act of Nineteen Seventy-four, section 4 of Chap. 576, Laws of 1974, section 10(a), as amended, are amended to read as follows:

#### PART 2504 EVICTIONS

##### Section 1

Paragraph (1) of subdivision (f) of Section 2504.4 of this Part is amended to read as follows:

(1) The owner seeks to demolish the building. Until the owner has submitted proof of its financial ability to complete such undertaking to the division, and plans for the undertaking have been approved by the appropriate governmental agency, an order approving such application shall not be issued. *For purposes of this paragraph, demolition shall mean, at a minimum, the complete gutting of all interior space in the building from the ground floor and above and including the removal of the building's roofs and of all internal building systems. However, a demolition under this subparagraph shall not require the removal of the outer walls and structural supports of a building.*

##### Section 2

Subparagraph (i) of paragraph (2) of subdivision (f) of Section 2504.4 of this Part is amended to read as follows:

(i) The division shall require an owner to pay all reasonable moving expenses and afford the tenant a reasonable period of time within which to vacate the housing accommodation. If the tenant vacates the housing accommodation on or before the date provided in the division's final order, such tenant shall be entitled to receive all stipend benefits pursuant to subparagraph (ii) of this paragraph. In addition, if the tenant vacates the housing accommodation prior to the required vacate date, the owner may also pay a stipend to the tenant that is larger than the stipend designated in [a demolition stipend chart to be issued pursuant to an operational bulletin authorized by section 2507.11 of this Title] *clause (c) of subparagraph (ii) of paragraph (2) of this subdivision*. However, at no time shall an owner be required to pay a stipend in excess of the stipend set forth in [such schedule] *clause (c) of subparagraph (ii) of paragraph (2) of this subdivision*. If the tenant does not vacate the housing accommodation on or before the required vacate date, the stipend shall be reduced by one sixth of the total stipend for each month the tenant remains in occupancy after such vacate date.

##### Section 3

Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (f) of Section 2504.4 of this Part is amended to read as follows:

(c) pay the tenant a stipend which shall be the difference between the tenant's current rent and [an amount calculated using the demolition stipend chart, at a set sum per room per month multiplied by the actual number of rooms in the tenant's current housing accommodation, but no less than three rooms. This difference is to be multiplied by 72 months] *the mean per room rent registered pursuant to Part 2509 of these regulations for housing accommodations in the zip code wherein the tenant currently resides, plus twenty percent, with said difference multiplied by 72 months.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Maurice Jamison, Special Assistant to the Deputy Commissioner, Division of Housing and Community Renewal, Office of Rent Administration, 92-31 Union Hall St., Jamaica, NY 11433, (718) 262-4816, e-mail: mjamison@dhcr.state.ny.us

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

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

**This action was not under consideration at the time this agency's regulatory agenda was submitted.**

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY

Section 26-511(b) of the Administrative Code of the City of New York, as recodified by the Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.0[b]), as amended by Laws of 1985, Chap. 888, section 2) and section 26-518(a) of such Code, as recodified by the Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.1[a], as added by the Laws of 1985, Chap. 888, section 8), provides authority to the Division of Housing and Community Renewal (DHCR) to amend Section 2524.5 of the Rent Stabilization Code (RSC).

The Emergency Tenant Protection Act (ETPA), Laws of 1974, Chap. 576, section 10a, provides authority to DHCR to amend the Tenant Protection Regulations (TPR).

##### 2. LEGISLATIVE OBJECTIVES

The proposed rule making is necessary to: (1) clarify the standards used to determine whether a proposed project constitutes a "demolition" within the meaning of RSC Section 2524.5(a)(2) and TPR Section 2504.4(f)(1); and (2) revise the methodology for the calculation of the stipend to be paid to a tenant evicted pursuant to RSC Section 2524.5(a)(2) and TPR Section 2504.4(f)(2) so that the amount of the stipend more accurately reflects the additional rent expenses that will be incurred by such tenant.

##### 3. NEEDS AND BENEFITS

Section 26-511c(9)(a) of the Administrative Code of the City of New York, RSC Section 2524.5 and TPR Section 2504.4 vest exclusive juris-

diction with DHCR over an application by an owner who wishes to evict rent stabilized tenants based on the owner's stated intention to "demolish" the building. DHCR, as well as its predecessor agency, the Conciliation and Appeals Board, have consistently ruled that a demolition may be something less than a razing of a building to the ground. In numerous administrative decisions and orders, and in its stated policy, the agency has granted demolition applications where the outer walls and structural supports of a building remain intact, with only the entire interior being gutted, including the removal of all internal building systems and the removal of the building's roof. This long-standing standard that DHCR currently utilizes has also been well established by case law precedent.

However, neither the statute nor any provision of the RSC or TPR includes a definition of the term, "demolition". The absence of a codified demolition definition or standard was brought to the forefront in recent litigation before the New York State Supreme Court (*Peckham v. Calogero*). In that matter, the Supreme Court stated:

[T]here is no statutory definition of the term in the RSC, and apparently no printed and circulated definition offered by the DHCR . . . While the legislature may have intended the agency involved in overseeing and administering the provisions of the Rent Stabilization and Rent Control Laws to determine what constitutes a demolition, the DHCR has not set forth sufficient criteria to inform parties involved or the courts. Therefore, this proceeding must be remanded to the DHCR so that it may set forth a more precise explanation of the term and its applicability to the facts.

In addition to the *Peckham* case, there are 45 other "demolition" applications pending before DHCR.

In order to comply with the *Peckham* court's demand for a "bright line" codification of the agency's demolition standards, to prevent incorrect interpretations of the agency standard, and to eliminate any uncertainty among the parties as to the agency's standard, DHCR is proposing these amendments which mirror the decades-long policy of the agency. To adopt a standard which materially differs from the long-standing agency policy and case law precedent would be unfair as it would result in significant financial losses to owners who initiated their demolition projects and filed DHCR applications in total reliance upon said long-standing agency policy.

It should be noted that even if no agency policy existed to which the owners had relied, and the agency had the freedom to create a brand new demolition standard, it would not adopt a standard that requires an owner to raze the building to the ground. Firstly, such an absolute standard would automatically disqualify owners of landmarked buildings from obtaining this statutory remedy. Secondly, requiring an owner to knock down the entire exterior shell of a building, in areas as densely populated as New York City and its neighboring counties, could create extremely unsafe conditions to pedestrians and the occupants of neighboring buildings, and could even cause significant structural damage to neighboring and/or attached edifices. For these reasons, the agency has rejected the "razing" standard as impractical and unnecessary.

The purpose of the stipend required by RSC Section 2524.5(a)(2) and TPR Section 2504.4(f)(2), which is to be paid to a tenant who is evicted under the authority of one of these sections and who has not been relocated by the owner to a suitable housing accommodation in close proximity to the building to be demolished, is intended to provide assistance to tenants who will be required to find new housing at rents that will, in virtually all circumstances, exceed the rents they are paying for their current apartments. Under the present methodology, the amount of the demolition stipends is based on city-wide data for apartments available for rental and is intended to compensate the affected tenants for increased rent payments for a seven-year period (*i.e.*, the amount of the stipend is equal to the difference between the tenant's current rent and the city-wide mean asking rent for a similarly-sized apartment, as reflected in the data of the Housing Vacancy Survey (HVS), with the latter figure intended to serve as an estimate of the increased rent the tenant will have to pay; the difference in rent is then multiplied by 72 months).

Since the HVS mean asking rent is a city-wide figure, it does not take into account the significant differences in rental rates among the various neighborhoods within the five boroughs of New York City. For example, according to data from the 2005 HVS, the mean asking rents for apartments in each of the boroughs of New York City (excluding Staten Island, for which available sample data was statistically insufficient) varies significantly from a high of \$1914 for Manhattan to a low \$949 for the Bronx, with Queens and Brooklyn falling in between these two extremes at \$1059 and \$998, respectively. (This data cannot be further broken down by apartment size because the even smaller sample size will not generate a statistically reliable result.) Similarly, the counties of Westchester, Rock-

land and Nassau calculate stipends by using county-wide data. Because the current agency methodology does not take into account the often wide disparity in rents from neighborhood to neighborhood within New York City or within each of the counties of Westchester, Rockland and Nassau, the resulting stipends awarded to tenants are in most instances quite inadequate to enable tenants to land on their feet and find another apartment in their localities. Accordingly, in the interests of fairness and justice, and to prevent the displacement of tenants from their neighborhoods, the current stipend calculation methodology must be changed to be based on zip code data, rather than the current city-wide or County-wide average in order to provide a more equitable form of relief to tenants who are evicted.

The available source that provides the most reliable neighborhood-level data on apartment rentals, which can be broken down by apartment size, is DHCR's rent registration database, which is updated annually, as opposed to every three years, as is the case with the HVS. Further, since the rent registration database, for the most part, includes rental information for occupied apartments, an upward adjustment by 20% (the statutory vacancy increase for rent stabilized apartments) of the rent amount obtained from the rent registration data base is required because the tenant who is being evicted will obviously be moving into an apartment that has been vacated by the prior tenant.

#### 4. COSTS

a. The regulated parties are residential tenants and the owners of the rent stabilized buildings in which such tenants reside.

Neither tenants nor owners are expected to experience any undue burdensome increase in costs associated with implementing these regulations. The revised stipend calculation methodology is intended and will result in a modest increase in stipend amounts paid by owners to tenants who are evicted due to the agency's approval of the owner's demolition applications.

b. DHCR costs are expected to be negligible. Otherwise, no additional costs are expected to be incurred by State or local governments as a result of adopting the proposed amendments.

c. Existing laws, regulations, agency policies and procedures form the basis upon which the above analysis is based.

#### 5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty, or responsibility upon any level of local government.

#### 6. PAPERWORK

It is anticipated that the proposed amendments will not result in any increase in paperwork.

#### 7. DUPLICATION

The proposed amendments do not duplicate any known State or Federal requirements.

#### 8. ALTERNATIVES

The proposed amendments clarify the definitional parameters of a demolition not yet reflected in the regulations and provide for a more effective and workable stipend calculation methodology. Additionally, the proposed amendments preserve the housing stock, serve the interests of equal treatment, equity, and do not violate due process rights. As indicated and discussed in the "NEEDS AND BENEFITS" section, absent these proposed modifications, there are no other significant viable alternatives.

#### 9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum Federal standards.

#### 10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules. If the parties need to amend or supplement their submissions in pending administrative proceedings before DHCR based on these regulations, applications may be made in those administrative proceedings. Should the DHCR determine that delayed implementation is appropriate, section 2527.11 of the RSC and section 2507.11 of the TPR authorize the agency to take such action.

#### **Regulatory Flexibility Analysis**

##### 1. EFFECT OF RULE

The Rent Stabilization Code (RSC) and the Emergency Tenant Protection Regulations (TPR) apply only to rent stabilized housing units in New York City and in those communities in Westchester, Rockland and Nassau Counties. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own limited numbers of rent stabilized units. The amended regulations are expected to have no burdensome impact on such small businesses.

These amendments to the RSC and TPR, which apply exclusively in New York City and in the aforementioned communities in Westchester,

Rockland and Nassau Counties, are expected to have no impact on the local governments thereof.

## 2. COMPLIANCE REQUIREMENTS

The Emergency Tenant Protection Act (ETPA) and the Rent Stabilization Law (RSL) both contain a provision which permits owners to apply to the Division of Housing and Community Renewal (DHCR) for approval to refuse to renew a tenant's lease and to commence a court proceeding to recover possession based on the demolition of the building. To support a demolition application, an owner must submit proof to DHCR of its financial ability to complete such an undertaking, and that plans for the undertaking have been approved by the appropriate governmental agency. It is expected that existing forms will be satisfactory. However, in any event, existing forms can be updated and amended where necessary.

The proposed amendments do not otherwise require regulated parties to perform any additional recordkeeping, reporting, or any other acts. There are no new compliance requirements placed on local governments.

## 3. PROFESSIONAL SERVICES

The proposed amendments do not require small businesses to obtain any new or additional professional services.

## 4. COMPLIANCE COSTS

There is no indication that this action will impose any significant costs upon small businesses or upon local governments. It is anticipated that stipend amounts, which are paid by owners to tenants who are evicted based on a building demolition, will increase modestly.

## 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual new or burdensome technological applications.

## 6. MINIMIZING ADVERSE IMPACT

These proposed amendments do not impair the rights of small business owners, and therefore, have no adverse economic impact on such parties or the local governments. Consequently, it was not necessary to consider the approaches suggested in SAPA section 202-b(1).

## 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

In order to comply with a judicial directive of the Supreme Court of the State of New York, DHCR is proposing a more explanatory regulatory standard for demolitions, to wit: the gutting of the entire interior of the building, including the removal of all internal building systems and the removal of the building's roof. This standard has been the long-standing policy of the DHCR and has sanctioned by the courts.

There are currently 45 demolition applications pending with DHCR. Since this proposed standard merely codifies a long-standing agency policy, it is anticipated that the proposed rule's impact on small business and local government will be negligible.

In addition, a Regulatory Agenda has been placed on DHCR's website, reflecting these proposed rules, thereby providing all interested parties with an opportunity to comment. All issues raised by concerned parties will be carefully reviewed and considered by DHCR.

Finally, prior to the final adoption of any permanent rules, a public hearing will be held during which all interested parties will have an opportunity to comment. Comments will be reviewed for possible inclusion where appropriate.

### **Rural Area Flexibility Analysis**

The Rent Stabilization Code applies exclusively to New York City, and therefore, the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

### **Job Impact Statement**

It is apparent from the text of the rule that there will be no adverse impacts on jobs and employment opportunities.

# Insurance Department

## NOTICE OF ADOPTION

### Market Stabilization Mechanisms for Individual and Small Group Market

**I.D. No.** INS-41-07-00005-A

**Filing No.** 568

**Filing date:** June 6, 2008

**Effective date:** June 25, 2008

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

**Action taken:** Amendment of sections 361.5 and 361.7(a), renumbering of sections 361.6-361.7 to sections 361.7-361.8 and addition of new section 361.6 to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1109, 3233; and L. 1992, ch. 501; L. 1995, ch. 504

**Subject:** Market stabilization mechanisms for individual and small group health insurance market.

**Purpose:** To create a new market stabilization process in the individual and small group market, to share among plans substantive cost variations attributable to high cost medical claims.

**Text of final rule:** The title of Section 361.5 is amended to read as follows:

Section 361.5 Pooling of variations in costs attributable to variations in specified medical conditions (SMC) beginning in 1999 through 2006.

Section 361.5 is hereby amended to add a new subdivision (k) to read as follows:

(k) Reporting requirements, payments to the pools, or collections from the pools under this section shall not be required in 2005 or 2006.

Sections 361.6 and 361.7 are hereby renumbered 361.7 and 361.8 and a new section 361.6 is added to read as follows:

361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 for individual and small group policies, other than Medicare supplement and Healthy New York policies.

(a) In each pool area a risk adjustment pool is established in connection with individual and small group health insurance policies, other than Medicare supplement insurance policies and Healthy New York health insurance policies. Each pool shall operate independently; that is, all calculations and payments described below are made for each pool independently of any other pool.

(b) The annual funding amount for all pool areas combined is as follows:

(1) \$80,000,000 for 2007;

(2) \$120,000,000 for 2008; and

(3) \$160,000,000 for 2009 and each calendar year thereafter.

(c) The annual funding amount for each pool area is in proportion to the annualized premiums in that pool area. For 2007 and each calendar year thereafter, each pool participant shall provide to the superintendent annualized premium information on or before February 28. The superintendent shall advise carriers of the funding amount for each pool area within sixty days of receipt of annualized premium information from all carriers.

(d)(1) Each carrier's share of the total funding payable to or from the pools shall be determined based on the carrier's high cost claims in its areas of operation.

(2) In order to implement the phase in of the new specified medical condition pooling process, on or before November 10, 2006 each carrier shall report to the superintendent its annualized premium amount as of December 31, 2005 and its cumulative calendar year claims paid in 2005 for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. The superintendent will provide carriers with an estimate of potential pool receivables or liabilities using this 2005 data for advisory purposes only.

(3) Each following year, beginning in 2007, on or before February 28, each carrier shall report to the superintendent its annualized premium amount as of December 31 of the preceding year and its cumulative calendar year claims paid in the preceding year for individual standard-