NEW YORK STATE | Gaming Commission

**MEETING AGENDA**
**MAY 22, 2023**

1. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

2. CONSIDERATION OF MINUTES FOR MEETING OF MARCH 27, 2023

3. REPORT OF THE EXECUTIVE DIRECTOR

4. RULEMAKING

   A. ADOPTION: SGC-08-23-00004-P AMENDMENTS TO RULES GOVERNING THE CONTENT OF GAMING FACILITY LICENSE APPLICATIONS

   B. REVISED RULEMAKING: MOBILE SPORTS WAGERING ADVERTISING MARKETING AND PROMOTIONS

5. ADJUDICATION

   A. IN MATTER OF NAJI M. MAHMOUD D/B/A NA MARKET

6. NEW & OLD BUSINESS

7. ADJOURNMENT

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# New York State
# Gaming Commission

## Minutes

## Meeting of March 27, 2023

A meeting of the Commission was conducted in New York, New York and Schenectady, New York. Two-way audio and video communications were maintained between locations for the duration of the meeting.

### 1. Call to Order and Establishment of Quorum

Executive Director Robert Williams called the meeting to order at 1:24 p.m. Establishment of a quorum was noted by Acting Secretary Kristen Buckley. In physical attendance in Manhattan were Chairman Brian O'Dwyer, and Members John Crotty, and Jerry Skurnik. In physical attendance in Schenectady was Member Peter Moschetti.

### 2. Consideration of Minutes for Meeting of February 27, 2023

The Commission considered previously circulated draft minutes of the meeting conducted on February 27, 2023. The minutes were accepted as circulated.

### 3. Report of the Executive Director

The Executive Director presented an update on the gaming aspects of the Governor's Executive Budget, outlining the responses of the N.Y.S. Senate and N.Y.S. Assembly. The Director also announced the Horse Racing Safety and Integrity Authority Anti-Doping & Medication Program had been implemented. Authority vendor, the Horseracing Integrity and Welfare Unit, will be undertaking the responsibility for the biologic sampling of horses competing in thoroughbred racing in New York, as well as out-of-competition testing for horses eligible to compete. HIWU and HISA will also be undertaking the testing of the samples, evaluation of results, and investigation and prosecution of transgressions.

Chairman O'Dwyer and Commissioner Crotty both raised concern that the levels of testing would be maintained by HISA and requested staff provide information regarding the levels of historic Commission testing and the expectation of testing to be undertaken by the Horseracing Integrity and Welfare Unit.

**4. RE-PROPOSAL: SGC-29-22-00010, Interactive Fantasy Sports**

**A.** The Commission considered re-proposal of rules to regulate Interactive fantasy sports.

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

**5. Adjudications**

**A. In the Matter of Timothy P. Murphy**

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had determined upon a 4-0 vote to adopt the Hearing Officer's findings of fact and conclusions of law, but imposing only a fine of $350.00 and suspending collection of the fine for one year, with the fine nullified so long as the licensee committed no other violations of Commission rules within such year.

**B. In the Matter of 135 East 3rd Food Mart Inc.**

The Commission, having considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of N.Y. Public Officers Law § 108.1, announced that it had determined upon a 4-0 vote to adopt the Hearing Officer's findings of fact, conclusions of law and recommendation of license revocation.

**6. New & Old Business**

**A. New Business**

Chairman O'Dwyer noted that as Chairman of both the N.Y.S. Thoroughbred Breeding and Development Fund and Agriculture and N.Y.S. Horse Breeding Development Fund he was aware that Catskill Regional Off-Track Betting Corporation owed substantial monies to both and was in the process of securing outside counsel to protect the rights of each Fund.

**B. Old Business.**

No old business was presented.

## 7. Adjournment

The meeting was adjourned at 1:46 p.m.

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NEW YORK STATE Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** April 25, 2023

**Re:** Adoption of Proposed Rulemaking for Casino Application Amendments (9 NYCRR § 5301.1)

For Commission consideration is the adoption of regulations to govern the content of casino license applications. The rulemaking proposes amendments to reflect the statutory requirements of Title 2-A of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law concerning the application process for additional casino licenses.

The Notice of Proposed Rulemaking was published in the February 23, 2023 State Register, an excerpt of which is attached. The public comment period for the proposed rulemaking expired on April 24, 2023. No comments were received.

[redacted].

cc: Robert Williams, Executive Director
Thomas Anapolis, Director, Division of Gaming

location is leased or to be leased, a copy of the lease or proposed lease or letter from the owner or its agent that the applicant has obtained or will obtain possession of the proposed licensed location. All leases shall be for a term of at least three years. For a change of control application wherein succession to the licensee's business premises does not occur by operation of law, the applicant shall provide evidence to the satisfaction of the superintendent that the lease(s) for the licensed locations will be assigned or sublet to the applicant or that a new lease(s) will be given the applicant if the applicant is not purchasing the property. All licensed locations except for limited stations and mobile units must [have minimum dimensions of at least 480 square feet. The] *include the* dimensions of the location and a diagram of the proposed layout [must be included] with the application.

***Text of proposed rule and any required statements and analyses may be obtained from:*** George Bogdan, Department of Financial Services, 1 State Street, 20th Floor, New York, New York 10004, (212) 480-4758, email: George.Bogdan@dfs.ny.gov

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

***Public comment will be received until:*** 60 days after publication of this notice.

***This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.***

***Regulatory Impact Statement***

1. Statutory Authority: Financial Services Law Sections 202 and 302 and Banking Law Sections 10, 14, 367, 369 and 371.

Financial Services Law Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

Financial Services Law Section 302 authorizes the Superintendent to prescribe regulations interpreting the Banking Law and to effectuate any power granted to the Superintendent in the Banking Law, Financial Services Law, and any other law.

Banking Law § 10 sets forth a declaration of policy, including that banking institutions will be regulated in a manner to insure safe and sound conduct and maintain public confidence.

Banking Law § 14 sets forth certain powers of the Superintendent under the Banking Law, including the power to "make, alter and amend orders, rules and regulations not inconsistent with law" and, under certain enumerated circumstances, to "make variations from the requirements" of the Banking Law, provided such variations are "in harmony with the spirit of the law."

Banking Law Section 367 and 369 establish the application requirements for persons seeking a license to operate as a licensed casher of checks and the conditions precedent to issuing a license. Banking Law 371 provides that the Superintendent is "authorized and empowered to make such rules and regulations … [as] necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this article, in addition hereto and not inconsistent herewith." Additional authority is provided by Banking Law Sections 10 and 14.

2. Legislative Objectives: To regulate, consistent with the purpose and requirements of Article IX-A of the Banking Law, the licensed check cashing industry.

3. Needs and Benefits: Currently, 3 NYCRR 400.1(c)(8) provides that "[a]ll licensed locations except for limited stations and mobile units must have minimum dimensions of at least 480 square feet." This requirement was established by regulation to facilitate the examination of licensed check cashing locations - it is not required by the Banking Law. In order to facilitate operations of the industry, the Department is proposing to eliminate the requirement that every licensed location maintain a dimension of at least 480 square feet. By eliminating the minimum space requirement, the industry may be able to reduce its overhead costs by relocating its licensed locations or by subletting existing space to other permitted businesses. The proposal may also facilitate the industry's ability to enhance utilization of electronic check cashing.

4. Costs: No additional costs will be imposed on licensed check cashers as a result of the proposed regulation, rather the proposed regulation aims to make it possible for licensed check cashers to reduce their overhead costs by limiting the amount of space required to operate a licensed check cashing location.

5. Local Government Mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: There are no new record keeping or filing requirements that will be imposed on the industry as a result of the proposed regulation.

7. Duplication: The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives: The Department considered leaving the existing square footage requirement in place. After consideration of the intent of the existing regulatory requirement, the Department elected to propose eliminating the requirement.

The Department posted a draft text of this regulation on its website for 10 days to solicit comment from small businesses that might be affected. The Department did not receive any written comments.

9. Federal Standards: Federal law does not govern the square footage requirement for licensed check cashers.

10. Compliance Schedule: The proposed amendment will take effect upon publication of the Notice of Adoption in the State Register.

***Regulatory Flexibility Analysis***

1. Effect of Rule: The proposal does not have any impact on local governments.

Approximately sixty-nine (69) of seventy-three (73) of the Department's licensed check cashers qualify as small businesses that employ fewer than one hundred (100) employees. The proposed amendment eliminates a sentence in the current version of the regulation that requires every licensed check cashing location to have a dimension of least 480 square feet. No additional costs will be imposed on licensed check cashers as a result of the proposed amendment, rather the proposed regulation aims to make it possible for licensed check cashers to reduce their overhead costs by limiting the amount of space required to operate a licensed check cashing location.

2. Compliance Requirements: The regulation does not change existing compliance requirements. Rather, the proposal eliminates a square footage requirement currently imposed on all licensed check cashing locations.

3. Professional Services: It is not anticipated that small businesses will require any professional services to comply with this amendment.

4. Compliance Costs: No additional compliance costs are expected as a result of the proposed amendment.

5. Economic and Technological Feasibility: No additional technological burden on regulated entities which are small businesses is expected.

6. Minimizing Adverse Impact: No adverse impacts are expected as a result of the proposed amendment.

7. Small Business and Local Government Participation: This regulation does not impact local governments.

The Department complied with SAPA Section 202-b (6) by posting the proposed rule on its website for informal outreach and notified all regulated companies subject to the proposed assessment that a draft rule had been posted. The Department also will comply with SAPA section 202-b(6) by publishing its proposal in the State Register and posting the proposal on its website again.

***Rural Area Flexibility Analysis***

The amendment will not have any adverse impact on rural areas or impose new substantial reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in New York State. The rule does not impose any new reporting requirements on any regulated entity. Check cashers are concentrated in urban areas, particularly in New York City. Commercial leasing rates are particularly high in New York City, and removing a minimum space requirement is expected to reduce costs in that market. While the amendment is focused on urban areas, it applies equally to the entire state, and check cashers in rural areas may also benefit from reduced rental expenses.

***Job Impact Statement***

The amendment to the regulation is not expected to have an adverse effect on employment. The amendment reduces an existing requirement that all licensed check cashing locations have a dimension of at least 480 square feet. By eliminating the minimum space requirement, the industry may be able to reduce its overhead costs by relocating its licensed locations or by subletting existing space to other permitted businesses. The Department does not see the reduction of overhead expenses having an impact on employment.

# New York State Gaming Commission

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Amendments to Rules Governing the Content of Gaming Facility License Applications**

**I.D. No.** SGC-08-23-00004-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 5301.1 of Title 9 NYCRR.

***Statutory authority:*** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(19), 1307(1), (2), 1313 and 1321-c

***Subject:*** Amendments to rules governing the content of gaming facility license applications.

***Purpose:*** To govern the content of gaming facility license applications.

***Text of proposed rule:*** Section 5301.1 of title 9 of NYCRR would be amended to read as follows:

§ 5301.1. Application to develop and operate a gaming facility.

* * *

(b) Applicant information.

(1) An applicant and, if applicable, the manager shall provide identifying information including, without limitation:

* * *

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

(ix) 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[; and].

[(x) the region and locality in which the gaming facility is proposed to be located along with the name, business address, email address, telephone number and fax number for the applicant's primary contact at each host municipality;]

(d) Economics. An applicant shall provide:

(1) [market analysis showing] the benefits of the applicant's gaming facility location, including:

* * *

(9) the marketing plans for the proposed gaming facility with specific reference to pre-opening marketing and opening celebrations; [and]

(10) a description of strategies to be used by the applicant to deal with the cyclical/seasonal nature of tourism demand*; and*

*(11) a proposed tax rate on gross gaming revenue from slot machines, which shall be no less than 25 percent, and a proposed tax rate on gross gaming revenue from all other sources, which shall be no less than 10 percent, as prescribed by Racing, Pari-Mutuel Wagering and Breeding Law section 1351(1-a). The application may provide for an applicant to propose tax rates in an initial submission and a supplement proposing final tax rates, after it is known which applicants have received community advisory committee assent to proceed with their applications, pursuant to Racing, Pari-Mutuel Wagering and Breeding Law section 1321 d(3)(e)(x) and (f)(1).*

* * *

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

(1) demonstrate local support by *doing the following:*

*(i) for an application pursuant to Title 2 of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law,* submitting to the Gaming Facility Location Board a resolution passed after a date announced by such board by a majority of the membership of the local legislative body of the host community supporting the application; *or*

*(ii) for an application pursuant to Title 2-A of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law, receiving an affirmative vote of the applicable community advisory committee, as set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1321 d(3)(e)(x) and (f)(1).*

* * *

(j) Workforce development. An applicant shall describe:

* * *

*(4) For a facility to be licensed pursuant to Title 2-A of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law:*

*(i) a description of workforce demographics including current employment of minorities, women and service-disabled veterans in permanent and part-time jobs at the applicant's gaming facilities;*

*(ii) a description of diversity in the ownership and leadership of the corporate entity;*

*(iii) a description of efforts the applicant is currently undertaking to ensure diversity at its facilities and plans to undertake at the proposed facility including:*

*(a) establishing mentorship opportunities and other business development programs;*

*(b) incorporating an affirmative action program of equal opportunity by which the applicant guarantees to provide equal employment opportunities to all employees qualified for licensure in all employment categories, including minorities, women and persons with disabilities;*

*(c) providing specific goals for the inclusion of minorities, women and veterans on construction jobs;*

*(d) ensuring that any contractors or subcontractors to any contractor make good faith efforts to provide minorities, women and veterans an opportunity to participate in the workforce;*

*(e) working and partnering with minority-owned businesses; and*

*(f) developing a plan of action that shall promote diversity in its business model, financing, employment goals, and other social and economic equity roles in the gaming industry.*

* * *

*(l) Other information. The application may request other information and materials that, in the judgment of the commission, would assist the Gaming Facility Location Board and the commission is discharging their duties pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Article 13, this subchapter or other applicable law.*

[(l)] *(m)* Duty to update application.

(1) Upon completion of an application prescribed in this section 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.

(2) 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.

(3) 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.

***Text of proposed rule and any required statements and analyses may be obtained from:*** Kristen M. Buckley, Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

***Public comment will be received until:*** 60 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. Pursuant to Section 103(2), the Commission is responsible for supervising, regulating and administering all gaming activities in the State. Racing Law section 1307(1) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13, which governs the operation of commercial casinos in the State. Racing Law section 1307(2) prescribes that the Commission regulate, among other things: the methods and forms of application and registration that any applicant or registrant shall follow and complete; the methods, procedures, and form for delivery of information concerning any person's family, habits, character, associates, criminal record, business activities and financial affairs; the procedures for the fingerprinting of an employee of a licensee, or registrant; and the manner and method of collection of payments of fees. Racing Law section 1313 prescribes the initial form of the application for gaming facility licenses. Racing Law section 1321-c requires the form of the application for additional gaming facility licenses to be the same as established under Racing Law section 1313.

2. LEGISLATIVE OBJECTIVES: This rule making carries out the legislature's direction to establish the form of the application for licenses to operate a gaming facility pursuant to the procedures of Racing Law Article 13, Title 2-A. Amendments to the regulations prescribing the form of a gaming facility application are required in order to account for differences in the law between Titles 2 and 2-A of Racing Law Article 13.

3. NEEDS AND BENEFITS: The proposed amendments would implement the above-listed statutory directives in regard to the content of gaming facility license applications. Amendments to the form of the application are required in order to account for differences in the law between Titles 2 and 2-A.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with these rules: Applying for a gaming facility license is

voluntary, but those parties who apply will bear some costs. There is an application fee of $1 million prescribed by Racing Law section 1321 d(2)(c) to defray the costs of processing the application and investigating the applicant. An applicant will also incur costs in preparing its application to comply with all required elements.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of these rules: These rules will impose some costs on the division of state police and the Commission for reviewing gaming facility applications, investigating applicants and issuing licenses, however it is anticipated that a gaming facility applicant's payment of the $1 million application fee prescribed by Racing Law section 1321-d(2)(c) will offset such costs. These 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 estimate is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: These proposed amendments 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 and carried out by the Commission.

6. PAPERWORK: These proposed amendments are not expected to impose any significant paperwork requirements for gaming facility applicants and licensees other than the paperwork already required by the existing rules.

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

8. ALTERNATIVES: These amendments are necessary to reflect the statutory differences between the requirements of Titles 2 and 2-A of Racing Law Article 13. Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York. It is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with these proposed amendments upon adoption.

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

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

The proposed rulemaking is a revision to the New York State Gaming Commission's rule governing the content of gaming facility license applications. The amendments would update application elements to be consistent with the application process set forth in Title 2-A of Article 13 of the Racing, Pari-Mutuel Wagering and Breeding Law.

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

# Department of Health

## NOTICE OF ADOPTION

### Updated Retention Standards for Adult Care Facilities

**I.D. No.** HLT-10-22-00009-A

**Filing No.** 102

**Filing Date:** 2023-02-07

**Effective Date:** 2023-02-22

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

***Action taken:*** Amendment of sections 487.4, 488.4 and 490.4 of Title 18 NYCRR.

***Statutory authority:*** Social Services Law, section 461(1)

***Subject:*** Updated Retention Standards for Adult Care Facilities.

***Purpose:*** To ensure admission and retention standards for adult care facilities are consistent with the Americans with Disabilities Act.

***Text of final rule:*** Subdivisions (b) and (c) of Section 487.4 are amended to read as follows:

(b) An operator shall not exclude an individual on the [sole] basis [that such individual is a person who primarily uses a wheelchair for mobility,] *of an individual's mobility impairment,* and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with [the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section] *federal, state, and local laws*.

(c) An operator shall not accept nor retain any person who:

(1) is in need of continual medical or nursing care or supervision as provided by facilities licensed pursuant to article 28 of the Public Health Law, or licensed or operated pursuant to articles 19, 23, 29 and 31 of the Mental Hygiene Law;

(2) suffers from a serious and persistent mental disability sufficient to warrant placement in a residential facility licensed pursuant to article 19, 23, 29 or 31 of the Mental Hygiene Law;

(3) requires health or mental health services which are not available or cannot be provided safely and effectively by local service agencies or providers;

(4) causes, or is likely to cause, danger to himself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care or safety of the resident or other residents, or which substantially interferes with the orderly operation of the facility;

(6) has a medical condition which is unstable and which requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purposes of reporting to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment program, including but not limited to a prescribed medications regimen when such failure causes, or is likely to cause, in the judgment of a physician, life-threatening danger to the resident or others;

(8) is chronically bedfast;

[(9) chronically requires the physical assistance of another person in order to walk;

(10) chronically requires the physical assistance of another person to climb or descend stairs, unless assignment on a floor with ground-level egress can be made;]

[(11)] *(9)* has chronic unmanaged urinary or bowel incontinence;

[(12)] *(10)* suffers from a communicable disease or health condition which constitutes a danger to other residents and staff;

[(13)] *(11)* is dependent on medical equipment, unless it has been demonstrated that:

(i) the equipment presents no safety hazard;

(ii) use of the equipment does not restrict the individual to his room, impede the individual in the event of evacuation, or inhibit participation in the routine activities of the home;

(iii) use of the equipment does not restrict or impede the activities of other residents;

(iv) the individual is able to use and maintain the equipment with only intermittent or occasional assistance from medical personnel;

(v) such assistance, if needed, is available from approved community resources; and

(vi) each required medical evaluation attests to the individual's ability to use and maintain the equipment;

[(14)] *(12)* engages in alcohol or drug use which results in aggressive or destructive behavior; or

[(15)] *(13)* is under 18 years of age; or, in a public adult home, under 16 years of age.

Subdivisions (b) and (c) of Section 488.4 is amended to read as follows:

(b) An operator shall not exclude an individual on the [sole] basis [that such individual is a person who primarily uses a wheelchair for mobility,] *of an individual's mobility impairment,* and shall make reasonable accommodations to the extent necessary to admit such individuals, consistent with [the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. and with the provisions of this section] *federal, state and local laws*.

(c) An operator must not accept nor retain any person who:

(1) needs continual medical or nursing care or supervision as provided by an acute care facility or a residential health care facility certified by the Department of Health;

(2) suffers from a serious and persistent mental disability sufficient to warrant placement in an acute care or residential treatment facility operated or certified by an office of the Department of Mental Hygiene;

(3) requires health, mental health, or other services which cannot be provided by local service agencies;

(4) causes, or is likely to cause, a danger to himself/herself or others;

(5) repeatedly behaves in a manner which directly impairs the well-being, care, or safety of the resident or other residents or which substantially interferes with the orderly operation of the enriched housing program;

(6) requires continual skilled observation of symptoms and reactions or accurate recording of such skilled observations for the purpose of reporting on a medical condition to the resident's physician;

(7) refuses or is unable to comply with a prescribed treatment

NEW YORK STATE | Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

**To:** Commissioners

**From:** Edmund C. Burns

**Date:** May 18, 2023

**Re:** Proposed Rulemaking for Sports Wagering Advertising (9 NYCRR §§ 5329.37 and 5330.45) (revised)

The Commission, at its February 27, 2023 meeting, authorized the proposal of rules to regulate advertising, marketing and promotions concerning sports wagering. The proposal is undergoing customary review before publication in the State Register.

Included in the proposal currently is a prohibition against compensating marketing and advertising third parties based on volume of patrons, wagers placed or the outcome of wagers, similar to a proposal that had been made in Massachusetts. After the Commission meeting, representatives of businesses known as "affiliate marketers" met with Commission staff and expressed concern that the scope of the proposed regulation would effectively prohibit their businesses from being compensated. Also subsequent to the Commission's meeting, Massachusetts adopted a revised version of its sports-wagering advertising rules, to allow for compensation of affiliate marketers.

New York's casino-gaming statute generally prohibits agreements in which the payment of any direct or indirect interest, percentage or share of any money or property gambled at a gaming facility, any money or property derived from gaming activity, or any revenues, profits or earnings of a gaming facility. Fixed-sum compensation is permitted. *See* Racing, Pari-Mutuel Wagering and Breeding Law section 1341(1). Staff considered the position of the affiliate marketers and the adopted Massachusetts regulation and recommends revising some provisions of the Commission's proposed rulemaking to allow for compensation of affiliate marketers, consistent with New York law, and otherwise address advertising and marketing by such businesses.

The text of the proposed amendments is attached, with changes noted from the version the Commission had authorized in February.

[redacted].

attachment

cc: Robert Williams, Executive Director
Thomas Anapolis, Director, Division of Gaming

Text to be deleted from February 27 authorized proposal appears in [brackets]
Text to be added to February 27 authorized proposal is underlined

**[New] Section 5329.1 of 9 NYCRR would be amended, and new sections 5329.37 and 5330.45 would be added to 9 NYCRR, to read as follows:**

**§ 5329.1. Definitions.**

(a) *Affiliate marketing partner* means an entity or person who promotes, refers potential customers to, or conducts advertising, marketing or branding on behalf of, or to the benefit of, a casino sports wagering licensee or sports pool vendor pursuant to an agreement with such licensee or vendor. This definition shall not apply to general news media that are not focused on gaming, gambling or wagering matters.

*[Current subdivisions in section 5329.1 would be re-lettered as (b) through (q)].*

*** * ***

**§ 5329.37. Advertising, marketing and promotions.**

(a) *Advertisements generally*.

(1) Advertisements and promotions used by a casino sports wagering licensee or sports pool vendor shall comply with Racing, Pari-Mutuel Wagering and Breeding Law section 1363 and comply with the responsible gaming requirements set forth in section 5325.6 of this subchapter.

(2) Advertisements and promotions used by a casino sports wagering licensee or sports pool vendor shall disclose the identity of the casino sports wagering licensee or sports pool vendor.

(3) Each casino sports wagering licensee or sports pool vendor shall be responsible for the content and conduct of any and all advertising, marketing or branding done on its behalf or to its benefit, whether conducted by such licensee, an employee or agent of such licensee, or an affiliated entity of agent of such licensee pursuant to contract or agreement.

(4) No person who, or entity that, is not a casino sports wagering licensee or sports pool vendor shall advertise sports gambling in the State, unless the advertisement disclaims conspicuously that the wagering offerings are not available in the State.

(5) No person or entity shall advertise forms of illegal gambling in the State, unless the advertisement disclaims conspicuously that the wagering offerings are not available in the State.

(6) No casino sports wagering licensee or sports pool vendor may enter into an agreement with [a third party to conduct advertising, marketing or branding on behalf of, or to the benefit of, such licensee] an affiliate marketing partner when the manner of compensation for such services is [dependent on, or related to, the volume of patrons, wagers placed or the outcome of wagers] prohibited by Racing, Pari-Mutuel Wagering and Breeding Law section 1341(1).

(b) *False, deceptive or misleading statements*.

(1) No advertisement or promotion for sports wagering, including any material published or disseminated by an affiliate marketing partner, shall contain false, deceptive or misleading statements or elements, including, without limitation, those concerning:

(i) chances of winning;

(ii) the number of winners; or

(iii) the rules, terms or conditions of wagering.

A false, deceptive or misleading statement or element includes, without limitation, one that reasonably would be expected to confuse or mislead patrons in order to induce them to engage in sports wagering.

(2) A casino sports wagering licensee or sports pool vendor shall not, directly or indirectly (such as through an affiliate marketing partner):

(i) promote irresponsible or excessive participation in sports wagering;

(ii) suggest that social, financial or personal success is guaranteed by engaging in sports wagering;

(iii) imply or promote sports wagering as free of risk in general or in connection with a particular promotion or sports wagering offer;

(iv) describe sports wagering as “free”, “cost free” or “free of risk” if the patron needs to incur any loss or risk the patron’s own money to use or withdraw winnings from the wager;

(v) encourage patrons to “chase” losses or re-invest winnings;

(vi) suggest that betting is a means of solving or escaping from financial, personal, or professional problems;

(vii) portray, suggest, condone or encourage sports wagering behavior as a rite of passage or signifier of reaching adulthood or other milestones;

(viii) portray, suggest, condone or encourage sports wagering behavior that is socially irresponsible or could lead to financial, social or emotional harm;

(ix) state or imply that the chances of winning increase with increased time spent on sports wagering or increased money wagered; or

(x) be placed on any website or printed page or medium devoted primarily to responsible gaming.

(3) A casino sports wagering licensee, [or] sports pool vendor, or affiliate marketing partner, shall not use misleading embedded keywords or similar methods in its platform to:

(i) attract persons under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1), self-excluded contestants or persons who are or may be problem gamblers; or

(ii) accomplish any other misleading or deceptive purpose.

(4) Each affiliate marketing partner shall disclose in its media, in a reasonably prominent manner (*e.g.*, after a writer's byline, after editorial content, in an "about" link on a webpage that is accessible from the page on which editorial content appears), whether such affiliate marketing partner has agreed to promote, refer potential customers to, or conduct advertising, marketing or branding on behalf of, or to the benefit of, one or more casino sports wagering licensees or sports pool vendors. Each casino sports wagering licensee or sports pool vendor shall cause each of its affiliate marketing partners to comply with this paragraph.

(c) *Marketing and promotions*.

(1) In connection with the marketing, promoting, advertising or offering of any promotion or displaying or offering of such on a casino sports wagering licensee's or sports pool vendor's platform or platforms, or on any platform or platforms over which a casino sports wagering licensee or sports pool vendor exercises actual or constructive control, such licensee shall:

(i) clearly and conspicuously disclose material facts, terms and conditions of the promotion to potential contestants and adhere to such terms;

(ii) clearly and conspicuously disclose to consumers material limitations to the promotion;

(iii) obtain express informed consent from any consumer who must deposit money to take advantage of the promotion; and

(iv) if an offer requires a patron to wager a specific dollar amount to receive the complimentary item or promotional credit, the amount that the patron is required to wager of the patron's own funds shall be disclosed in the same size and style of font as the amount of the complimentary item or promotional credit, and the complimentary item or promotional credit shall not be described as free.

(2) No casino sports wagering licensee or sports pool vendor, or any employee, agent or vendor thereof, shall advise or encourage individual patrons to place a specific wager of any specific type, kind, subject or amount. The prohibition in this paragraph shall not apply to general advertising or promotional activities.

(3) Each direct advertisement of sports wagering shall clearly and conspicuously describe a method by which an individual may opt out of receiving future direct advertisements. Any request to opt out must be accomplished as soon as practicable and, in any event, no later than 15 days from the date of such request. If a direct advertisement is sent via electronic mail, the described opt-out method must include either an electronic mail address that will accomplish such opt-out or a link to an online website address at which such opt-out may be accomplished as simply as practicable. A direct advertisement sent other than by electronic mail shall include at least one of the following methods to opt out:

(i) telephone;

(ii) regular United States mail;

(iii) online website address or mobile application at which such opt-out may be accomplished as simply as practicable; or

(iv) electronic mail.

(d) *Federal rules*. A casino sports wagering licensee or sports pool vendor shall follow all rules concerning endorsements, including, without limitation, rules of the Federal Trade Commission.

(e) *Marketing to underage persons*. A casino sports wagering licensee or sports pool vendor shall not allow, conduct or participate in any advertising, marketing or branding for sports wagering that is aimed at persons under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1).

(1) Design. No sports wagering message shall be designed to appeal primarily to those below the legal age for sports wagering by depicting cartoon characters or by featuring entertainers or music that appeal primarily to audiences under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1), nor should any message suggest or imply that persons under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1) engage in sports wagering.

(2) Composition of audience. Sports wagering advertising and marketing shall not be placed in broadcast, cable, radio, print or digital communications where the reasonably foreseeable percentage of the composition of the audience that is persons under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1) is greater than the percentage of the population in the State that is under such age, such population as measured by the most recent competed decennial census.

(3) Use of logos, trademarks and brand names. No sports wagering messages, including logos, trademarks or brand names, shall be used or licensed for use on clothing, toys, games or game equipment intended primarily for persons below the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law

section 1332(1). To the extent that promotional products carry sports wagering messages or brand information, a sports pool licensee and its employees shall use commercially reasonable efforts to distribute such products only to those who have reached the legal age for sports wagering.

(4) College and university media. Sports wagering shall not be promoted or advertised in college- or university-owned news assets (*e.g.*, school newspapers, radio, telecasts) or advertised on college or university campuses, except that generally available advertising that is not targeted to the area of a college or university campus shall not be prohibited by this paragraph.

(5) Depiction of underage persons. No advertisement for sports wagering shall depict a person under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1); students; schools or colleges; or school or college settings, except where such image may incidentally depict a person under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1) or is an image of a professional athlete during a type of sporting event on which wagering is permitted.

(6) Endorsements. No advertisement for sports wagering shall state or imply an endorsement by a person under the wagering minimum age set forth in Racing, Pari-Mutuel Wagering and Breeding Law section 1332(1) (other than professional athletes); college athletes; schools or colleges; or college athletic associations.

(f) *Age notices in online content*. Owned websites or profiles that include sports betting content, including social media pages and sites, shall include a reminder of the legal age for sports wagering in the State.

(g) *Retention*. A registrant shall maintain records of each television, radio, print, digital or other advertisement for a period of at least four years from the date such advertisement last appears and shall make each such record available to the commission upon request.

(h) *Direction to cease*. Any person or entity, upon notice from the Commission, shall cease, as expeditiously as possible, to offer advertising, marketing or a promotion that violates this section.

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**§ 5330.45. Advertising, marketing and promotions.**

The provisions of section 5329.37 of this subchapter are incorporated herein and shall apply also to each mobile sports wagering licensee and mobile sports wagering vendor licensee.