

## Assessment of Public Comment

The Office of Children and Family Services (OCFS) received comment from eight entities: one social services district, five voluntary authorized child caring agencies, one Advocacy organization and one law firm.

1) Six commenters expressed concern that the Regulatory Impact Statement and/or the Regulatory Flexibility Analysis indicated there would be no fiscal impact on voluntary child welfare agencies. These commenters expressed concern that the fiscal impact would be considerable for system implementation and training, changes in business practices, equipment, and use of the Data Warehouse to support local analysis and reporting. Three commenters requested changes to the Maximum State Aid Rates (MSARS) to cover additional costs.

Response: As the original Regulatory Impact Statement and Regulatory Flexibility Analysis noted, Section 446 of the Social Services Law (SSL) requires both the implementation of CONNECTIONS and the promulgation of regulations for the timely recording of child welfare services information in that system. The fiscal impact of developing and operating CONNECTIONS results from this statutory requirement; not from these regulations. Caseworkers currently must provide the information required by these regulations in paper format. These regulations require the information to be inputted in CONNECTIONS instead. However, as several comments were raised regarding the statutory implementation costs, further information about those costs is set forth below. The above-noted regulatory statements were similarly revised.

**System Implementation and Training:** Implementation of CONNECTIONS case management and financial management functionalities will be phased-in between February 2005 and November 2006. This phased approach responds to field requests for preparation tools, training and on-site support in advance of and during the production rollout. OCFS is investing over \$21 million in federal and State funding for training, on-site technical assistance and other implementation efforts during this time period. OCFS intends to provide: a series of structured tools and technical support to assist users in planning and preparing to implement the new system; classroom and laboratory training for approximately 17,000 child welfare staff throughout the State; hands-on assistance to social services districts and agencies prior and subsequent to implementation; automated on-line help support; automated and hard copy desk aids; and video training tools. The full participation in these activities by casework staff in social services districts and voluntary agencies will maximize their ability to adjust successfully to the new system with a minimum of disruption to their daily work activities.

**Changes in Business Practices:** The re-engineering of child welfare business processes will permit multiple people involved in a case to access records through CONNECTIONS. The CONNECTIONS system will provide caseworkers with a single automated tool to better manage their cases and workloads, resulting in program efficiencies and cost savings. The efficiencies gained will strengthen the quality of child welfare services in the State and support improved outcomes for children and families.

**Equipment:** A list was compiled of additional equipment requested by social services districts and voluntary agencies. Typically, these added devices would be considered supplemental equipment and the requesting social services district or

voluntary agency would be responsible for the entire cost, including network maintenance costs. However, to assist in meeting these requests, OCFS will participate in equipment purchases by contributing both federal and State resources, thereby reducing the local cost. Furthermore, OCFS will pay for the network maintenance costs.

**Use of Data Warehouse to Support Local Analysis and Reporting:** OCFS is dedicating an additional \$1 million in federal and State funding to enhance the Data Warehouse's performance levels to better support local data analysis needs. Social services districts and voluntary agencies will execute queries into the Data Warehouse, which will provide information to assist with data analysis, trending, and reporting. End users will use available reporting tools to create and save various types of reports.

**Rate Structure:** The State Fiscal Year 2004-05 MSARs include overall two-year cost adjustment factors of 4.4 percent and overall growth factors of 7 percent in non-personal service.

2) Two commenters asked about additional Help Desk support, and its quality, reliability and security.

**Response:** OCFS has already begun to implement a Build 18 support plan with the Enterprise Help Desk (EHD). Agents are currently on site two days per week to review the application, attend formal training, and develop situational help files in anticipation of user support needs. A CONNECTIONS Specialist triage system has been implemented to route application problem calls to knowledgeable agents. An additional \$3.8 million in federal and State funding will be dedicated to the EHD to cover anticipated increases in volume over a two-year period, including increasing the number of EHD agents as the application is rolled out.

3) Two commenters expressed concerns about the possibility of outages.

Response: OCFS, in partnership with the New York State Office For Technology, is implementing an infrastructure that maximizes redundancy. Other actions have been taken to minimize the risk and duration of any system-wide outages. OCFS has a Disaster Recovery and Business Continuity Plan to respond to any outages. Further, because CONNECTIONS security is user specific, if an outage occurs at just one or a limited number of sites, users will be able to access the system from other sites until it is restored to the affected sites.

4) Two commenters expressed general concern about reduced payments resulting from implementation of the Statewide Services Payment System (SSPS) and its relationship to Benefits Issuance and Control System (BICS) prior to CONNECTIONS implementation.

Response: If social services districts were properly paying voluntary agencies prior to SSPS implementation, there should be no reduction in payments when SSPS Phase II is implemented. A significant data cleansing effort was initiated prior to SSPS' implementation to assist social services districts in determining whether appropriate rates were being paid. Further enhancements to this system will provide for automated processing of rate adjustments, payments to foster care vendors on a child-specific basis, rate table functionality and retroactive processing for voluntary agency expenditures. These enhancements, make the payment process more accurate and streamlined, and eliminate the need to calculate payment rates manually. Child specific payments also will help voluntary agencies review cases to determine whether the proper amounts have been paid for a child.

SSPS also provides payment and claiming logic to support federal Title IV-E claiming requirements for foster care and adoption assistance. Payments that do not meet required edits will not be reimbursed with federal Title IV-E funds. This will better protect federal financial participation for these programs by improving the districts' compliance with federal Title IV-E requirements.

5) Two commenters questioned how the CONNECTIONS system would treat cases subject to this Advocates Settlement Agreement, and why the Agreement's information sharing restrictions was not mentioned in the proposed regulations. One asked that the Regulatory Impact Statement be amended to reference the Agreement.

Response: OCFS will implement the regulations in a manner consistent with the Settlement Agreement. However, the Agreement applies to a very small category of cases, i.e. those cases in New York City where a family is receiving only preventive services from a child welfare services agency under a contract with the Administration for Children's Services. The Agreement does not apply to other child welfare services cases in New York City or to any child welfare services cases in the rest of the State. Because the regulations apply to child welfare services cases throughout the State, the decision was made not to amend the Regulatory Impact Statement in response to this comment. However, OCFS has reaffirmed its commitment to comply with the Settlement Agreement, to the extent it remains in effect, by direct correspondence with those making this comment.

6) Two commenters disagreed with the proposed retention standard for preventive-only cases.

Response: The proposed retention period was chosen because a person may receive preventive services up to the age of 18. A district may contract for the provision of such services. Under section 213(2) of the Civil Practices Laws and Rules, the statute of limitations for a contract cause of action is six years. Therefore, the regulations requires the retention of case record information for six years past the 18<sup>th</sup> birthday of the youngest child in the case to address any contractual compliance issues that may arise. Accordingly, the proposed regulations were not revised.

7) Two commenter asked for further language distinguishing preventive-only cases from cases that may have had foster care services provided in conjunction with or in addition to preventive services.

Response: The proposed language is sufficiently clear that a case may be designated as a preventive-only case if only non-court ordered preventive services are being provided while the case is continuously open. If any foster care or protective services are provided to the family while the case is continuously opened, it may not be designated as a preventive-only case. Accordingly, the proposed regulations were not revised.

8) One commenter asked that the regulations specifically address when foster care records must be expunged.

Response: The proposed regulations provide the minimum amount of time foster care records are to be maintained. There is no statutory requirement that foster care records be expunged after a set period of time. Therefore, the regulations leave it to the districts or agencies' discretion to determine how long beyond the minimum retention

period they wish to continue to store and care for such records. Accordingly, the proposed regulations were not revised.

9) One commenter suggested that the Health Insurance Portability and Accountability Act of 1996 (HIPAA) be added to the several confidentiality standards with which users must comply.

Response: OCFS researched HIPAA and determined that the collection of health information in CONNECTIONS would not make the system subject to the HIPAA regulations, as it is not a covered entity as defined in the 45 CFR 160.103. For those social services districts and voluntary agencies that may have designated themselves as covered entities, there are no prohibitions under HIPAA that would prevent them from entering or maintaining health information about children in CONNECTIONS. Furthermore, the State is required by a variety of State and federal statutes and regulations to collect certain health-related child welfare information. For example, 45 CFR 1355, Appendix D (AFCARS), specifically requires states to collect and report certain adoption and foster care data elements for all children receiving federal Title IV-E funding, including conditions that require special medical care, such as chronic illnesses including HIV/AIDS, and whether a child is mentally retarded, visually or hearing impaired, physically disabled, or emotionally disturbed. Medicaid assistance information must also be captured in CONNECTIONS under federal law. HIPAA explicitly permits covered entities to disclose protected health information as required by law [see 45 CFR 164.512(a)]. Thus, HIPAA does not prevent a covered entity from disclosing, entering or maintaining such information in CONNECTIONS. Therefore, it would be inappropriate

to include HIPAA in the list of confidentiality cites included in the CONNECTIONS regulations. Accordingly, the proposed regulations were not revised.

10) One commenter suggested that OCFS should add regulations governing records of a provider agency that ceases operation or stops being a provider agency.

Response: OCFS agrees with the commenter and has developed such a proposed regulation to address this area that will be included in another regulatory package that will soon be published for public comment. Accordingly, the proposed regulations were not revised.

11) One commenter recommended that the word “specific” be deleted from section 466(b) of the proposed regulations, which provides that access to information in the CONNECTIONS system by a caseworker should only be given when such information is “necessary to perform his or her specific job responsibilities.”

Response: The proposed regulation is consistent with existing OCFS regulations dealing with the disclosure of client identifiable information in general by social services districts and voluntary agencies, as set forth in 18 NYCRR 357.5(g). Accordingly, the proposed regulations were not revised.

12) One commenter asked that the word “any” be deleted from the provision that requires the agencies’ policies and practices for maintaining the confidentiality of information in the CONNECTIONS system include the requirement to take disciplinary action against “any” employee who fails to comply with the confidentiality standards.

Response: Section 466.4(c) provides that each social services district and agency providing child welfare services that has access to individual identifiable information develop and implement policies and practices, consistent with applicable statutes and

regulations, to maintain the confidentiality of information contained in CONNECTIONS. These polices must include taking disciplinary action against any employee who fails to comply with such standards. The regulations do not specify what form of disciplinary action must be taken in each case. However, the failure to comply with statutory and/or regulatory confidentiality standards is a serious issue that districts and agencies must address. Where there is non-compliance, a district or agency must take appropriate action against the offending person. Accordingly, the proposed regulations were not revised.

13) One commenter questioning whose responsibility it was to seal or expunge information and suggested that the CONNECTIONS system be programmed to automate the rules.

Response: The CONNECTIONS system will automate expungement and sealing of the child protective and preventive records maintained in the system, in accordance with the regulations. However, for any information that is maintained outside of the system, such as paper documents from third party sources, it is still the responsibility of the authorized agency to comply the expungement and sealing requirements. Accordingly, the proposed regulations were not revised.

14) One commenter asked that a cross reference to Section 422 (6) of the SSL regarding the retention period for child protective services (CPS) records be added to Section 466.5(b) of the regulations.

Response: OCFS agrees with this comment and has added the cross-reference to the regulations. This is a technical, non-substantive change to the regulations.