

REGULATORY IMPACT STATEMENT

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 1017 of the Family Court Act (FCA), as amended by Chapter 3 of the Laws of 2005, authorizes the collection of certain information on non-respondent parents and relatives of children when the court determines that such children must be removed from their homes. Furthermore, such section authorizes the placement of the child with a non-respondent parent, relative or other suitable person.

Article 10-A of the FCA establishes uniform procedures for permanency hearings for all children who are placed in foster care either voluntarily or as abused or neglected children, or are directly placed with a relative or other suitable person pursuant to Article 10 of the FCA and all foster children who are completely freed for adoption.

Section 383-c of the SSL establishes the criteria for the surrender of custody and guardianship of a child in foster care to an authorized agency.

Section 384 of the SSL establishes the criteria for the surrender of custody and guardianship of a child not in foster care to an authorized agency.

Section 409-e of the SSL establishes the requirements for the completion, updating and review of assessments and services plans for all children who are in foster care and who are at risk of placement into foster care.

2. Legislative objectives:

Chapter 3 of the Laws of 2005 provides children placed out of their homes with more timely and effective judicial and administrative reviews in order to promote permanency, safety and well-being. To effectuate this purpose, Chapter 3 grants the courts continuing jurisdiction over children in foster care placements under Article 10 of the Family Court Act, children who have been voluntarily placed in foster care, and children who have been completely freed for adoption; improves permanency outcomes for children in foster care; and provides for comprehensive reform of the provisions of law which govern the permanency hearing processes for children placed in the foster care or placed directly with a relative or other suitable person under Article 10 of the FCA. Chapter 3 of the Laws of 2005 further addresses the issue of conditional surrenders for adoption and any associated agreement that has been made for ongoing contact and communication between the adopted child and the birth parent and/or sibling or half sibling of the adopted child. This legislation also establishes standards for enforcement of the terms of conditional surrenders both prior and subsequent to the adoption of the child based on the best interests of the child.

Additionally, the regulations reflect the repeal of sections 153-d and 398-b of the SSL by Chapter 83 of the Laws of 2002 which, previous to repeal, had authorized OCFS to sanction social services districts if they did not meet certain requirements, including those relating to timely filing of certain court review petitions that have been eliminated by Chapter 3 of the Laws of 2005. The repeal of 18 NYCRR 430.1 through 430.7 and 430.13 are necessary to reflect these statutory changes.

3. Needs and benefits:

The regulations implementing Chapter 3 of the Laws of 2005 provide for a more frequent series of administrative reviews and service plan development activities involving all parties with a stake in the outcome. The regulations support permanency planning through enhancing the service plan review process and the collection of comprehensive and timely information for the development of the permanency hearing report. The regulations also set out the critical areas of review necessary to advance the child's permanency plan. In accordance with the legislation, these regulations provide a specific means for meeting documentation requirements with regard to a child's out-of-home placement or for any child considered for foster care. The regulations implement the change of the permanency goal from "independent living" to "discharge to another planned living arrangement with a permanency resource". The regulations support the need to locate an absent parent and other relatives of a child in out-of-home placement, in order to consider each of those persons as a resource for the child. The regulations also provide that any person designated by the child's birth parent to be the child's adoptive parent in a conditional surrender to be a certified or approved foster parent or an approved adoptive parent, in support of a child's need for a safe, permanent home.

4. Costs:

The implementation of these regulations and the underlying statutory provisions have both state and local costs associated with them. Local costs are partially offset by expected improvements in case processing, avoidance of federal sanctions and more rapid achievement of permanency for children in care and the associated savings attached to a shorter length of stay.

State activities related to the implementation of the statute and regulations will result in the delay of the final release of CONNECTIONS due to the redesign of current aspects of Build 18 (Case Management) and to incorporate the regulatory changes into the design of Build 19 (Financial Management).

There are anticipated costs as well as savings for local social service districts and voluntary authorized agencies as a result of implementation of the statutory provisions underlying these regulations. Initial implementation, as with any major policy and practice change, will require additional staff time to learn the new process and, with these regulations, to complete the statutorily required permanency hearing report and conduct case consultations prior to the development of permanency hearing reports in a more formal manner than is currently required. These staff costs will be offset, in part, by: the elimination of the requirements for administrative service plan reviews whenever the family court permanency hearing meets the federal requirement for such review to be held at least every six months; the elimination of the requirement for case consultations prior to service plan reviews; the elimination of filing of petitions with family court in most child welfare related matters, and elimination of the personal service of notice of hearings. Due to date certain calendaring of permanency hearings, it is anticipated that there will be a reduction in court adjournments resulting from the legislation underlying the regulations. This will reduce the time staff must spend in family court. Staff costs will be further offset when development work is completed so that the permanency hearing report is pre-filled and generated electronically, customized for the child's age and permanency planning goal.

Additional savings to local districts include anticipated reduced lengths of foster care stays for some children as a result of permanency hearings held more frequently than is now the case. There is also the potential to avoid foster care placements at the time of emergency removals by requiring hearings in all cases. The implementation of these regulations and the underlying statutory provisions will also eliminate lapsed authority for foster care placements, as the court retains continuing jurisdiction until the child is discharged, and will promote more timely reasonable efforts determinations by the court, thereby reducing the compliance items for which the State, and therefore the local districts, may be sanctioned in the secondary federal Title IV-E review scheduled in New York State for August 2006 and subsequent Title IV-E reviews.

5. Local government mandates:

The primary mandates are on local social services districts and voluntary authorized agencies to prepare for permanency hearings by conducting a case consultation with case members and other participants. Although case consultation is currently required, these regulations impose a formal structure and process. This case consultation is in addition to the service plan review that districts and agencies already conduct with such persons. In addition, they must prepare permanency hearing reports on the prescribed statutory schedule, increasing documentation requirements upon local social services districts. However, the requirement for preparation, filing and serving of petitions for most child welfare related court hearings no longer exists, thus offsetting such increased documentation requirements. The requirements established by the regulations are in keeping with the intent of Chapter 3 – that children served by the child

welfare system are in settings where they are as safe as possible, and that such children reside in permanent homes as soon as reasonably can be accomplished.

6. Paperwork:

Chapter 3 of the Laws of 2005 requires the completion of a permanency hearing report for filing with the court and sharing with other persons involved in the case for all children in foster care, with the exception of non-completely freed juvenile delinquents and persons in need of supervision, and all children directly placed in the custody of a relative or other suitable person pursuant to Article 10 of the FCA. This is a new requirement for child welfare staff who serve children impacted by Chapter 3. OCFS, in collaboration with OCA, the Administration for Children Services in New York City and a representative sample of local social services districts developed templates for use Statewide to meet the permanency hearing report requirement and to alleviate the need for local social services districts to design and create their own reports. Additionally, the requirements for Uniform Case Record documentation in accordance with section 409-e of the SSL have increased when a child is removed from his or her home. It is anticipated that there will be implementation costs associated with these regulations. The impact will be dependent on the individual district's or agency's current circumstances and capacity. This impact will be mitigated by the introduction of an automated permanency hearing report in 2007. In addition, this increase is partially offset by the first reassessment being due one month later than had previously been required.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

There are no alternatives to these regulations as they are governed by the statutory requirements of Chapter 3 of the Laws of 2005.

9. Federal standards:

This legislation facilitates permanency planning for such children and assists New York State to comply with federal standards set forth in the federal Adoption and Safe Families Act of 1996 (ASFA) and other eligibility requirements under Title IV-E of the Social Security Act. Each time a permanency hearing is delayed, a child potentially stays needlessly longer in foster care. If the permanency hearing is not timely, pursuant to federal Title IV-E standards, the local social services district is at jeopardy of losing federal Title IV-E funding for foster care for the child, until an appropriate court finding of reasonable efforts to enable a child to return home safely, if the goal is reunification, or that reasonable efforts were made to finalize the child's permanency plan is made. Chapter 3 improves permanency by granting the Family Court continuing jurisdiction over the child during foster care placement. By providing the Court with continuing jurisdiction, legal authority of the local social services district over the child placement does not lapse until completion of the child's permanency hearing or further direction of the court. Prior to enactment of Chapter 3 a lapse in legal authority could occur resulting in ineligibility for reimbursement under Title IV-E of the Social Security Act for foster care for the child. It is expected that continuing jurisdiction should reduce by months the time a child might spend in foster care.

10. Compliance schedule:

Compliance with the regulations must begin immediately upon filing. December 21, 2005 is the effective date of the relevant sections of Chapter 3 of the Laws of 2005.