

6. The adoption of these regulations on an emergency basis is necessary to protect the health, safety and welfare of families and children receiving subsidized child care in New York State. First, these regulations address the expanded need for child care services by families affected by the extensive loss of jobs and employment opportunities as a result in the economic downturn of the State and national economy. With the simultaneous severe downturn of the credit, housing, job and stock markets and expected unusually slow recovery of each, OCFS expects the need for child care services for those battling the economic depression to only continue to grow for the foreseeable future. Further, without this action OCFS believes that the consequences for those battling the economic depression will only deepen, and only lead to an even slower recovery for the affected families and, as a result, the State economy.

OCFS also believes that by implementing these regulations, it will allow social services districts to meet some of the expanding need for child care services by families imperiled by the economic depression, which will hopefully allow those families to maintain or gain much needed services, training or employment. To be effective, and in order to best serve the families in the State that need child care services, OCFS must act quickly and without delay. Any delay in action may only exacerbate the financial crisis facing many families that need child care services in the State. Faced with this stark consequence, OCFS decided it had to act on an emergency basis, to get the needed child care services to those in the affected communities as soon as possible

Second, it is also necessary to adopt these regulations on an emergency basis because Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure equal access for eligible children. The market rates that are being replaced are based on a survey conducted in 2007 and as a result, continuing to maintain the existing rates could result in subsidized families losing equal access for eligible children to child care arrangements or being unable to find appropriate child care.

In addition, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The current State Plan in effect covers the period October 1, 2007 through September 30, 2009. The proposed State Plan for the period October 1, 2009 through September 30, 2011 has been submitted to the federal government for approval. The federal Administration for Children and Families has indicated that the New York State Child Care and Development Fund (CCDF) Plan cannot be approved unless child care market rates have been adjusted, based upon a market rate survey, and are effective on October 1, 2009. Unless new market rates become effective on that date, the State's ability to use federal funds under CCDF and to transfer Temporary Assistance to Needy Families funds into CCDF for child care subsidies will be jeopardized.