

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

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

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant. It includes provisions regarding the use of funds by social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. OCFS is required to specify certain NYSCCBG requirements in regulation.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant.

Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure equal access to care that is provided to children whose parents/caretakers are not eligible to receive assistance

under federal or state programs. Additionally, 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

2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist low income families in meeting their child care costs in programs that provide for the health and safety of their children. The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

The regulations support the legislative objectives underlying Sections 332-a, 334, 335 and 410 and Title 5-C of the SSL to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and protect children. In addition, the regulations provide social services districts with greater local flexibility to provide child care services in the manner that best meets the needs of their local communities.

3. Needs and benefits:

The State is required under the Federal Child Care and Development Fund to adjust child care payment rates with each new State Plan based on a current survey of providers. The current State Plan covers the period October 1, 2007 through September 30, 2009 and the proposed State Plan for the period October 1, 2009 through September 30, 2011 has been submitted for approval by the federal government. A current survey of

providers was conducted in April and May of 2009. These regulations are needed to adjust existing rates that were established based on a survey done in 2007. Adjustments to the child care market rates reflect both increases and decreases in the five groupings of counties

Decreases in the child care market rates reflect the market place and provide comparable access to those families in receipt of a child care subsidy as compared with families that do not receive a child care subsidy, which is required by federal and State laws.

In addition, this regulatory package includes the three provisions from the previous market rate stimulus regulatory package that was filed previously on an emergency basis on May 15, 2009 and was re-filed on August 13, 2009. The revised market rates that were in effect since August 13, 2009 are superseded by this filing.

The first provision is the exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 when determining the eligibility for social services programs. These regulations address the federal requirement that one time payments disbursed under the American Recovery and Reinvestment Act of 2009 to recipients of Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits be excluded as income for determining eligibility for any programs in receipt of federal funds.

Second, social services districts have the option to serve families in which the parent/caretaker is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. Social services districts may choose to serve these families to provide safe, affordable child care

to enable these parents/caretakers to be trained in various skills and rejoin the workforce in new employment.

Third, some districts have indicated that, in these difficult economic times, more families could be served without a negative impact on family access to child care if the enhanced child care market rate for legally-exempt family and in-home child care providers was lowered. Currently, there are two child care market rates established for legally-exempt family and in-home child care providers. One, the enhanced market rate, based on a 75 percent differential applied to the child care market rates established for registered family day care. The 75 percent reflects an incentive to legally exempt providers to pursue a minimum of ten hours of approved training. Two, the standard market rate, based on a 65 percent differential applied to the child care market rates established for registered family day care. The 65 percent applies to legally-exempt family and in-home child care providers that have not obtained ten hours of training annually. These regulations propose to establish the enhanced market rate for legally-exempt family and in-home providers at a 70 percent differential applied to the child care market rates established for registered family day care. Additionally, the regulation allows local social services districts, which so choose in their Child and Family Services Plans, to increase the enhanced market rate to up to 75 percent of the applicable registered family day care market rate. Further, a social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on

the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement.

4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; and, districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the New York State Child Care Block Grant, and is limited on an annual basis to each district's New York State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2009-2010, social services districts received their allocations of \$736,036,409 in federal and State funds under the New York State Child Care Block Grant. This funding represented an increase of \$11.9 million from the base amount allocated to districts for SFY 2008-09. These increases in funding are available to cover any increased payments by social services districts due to the implementation of the adjusted market rates. Further, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations. In addition, social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block

grant funds allocated to them to increase the enhanced rate from 70 percent up to 75 percent, if social services districts select this option.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

Social services districts will also be required to amend their existing Child and Family Services Plan to select the expanded categories of eligible families to include the parent/caretaker that is a dislocated worker participating in a training program in a employment field that currently is or is likely to be in demand in the near future, if social services districts so desire. In addition, social services districts would also be required to amend their existing Child and Family Services Plans to increase the enhanced market rate for legally-exempt providers of family child care or in-home child care to 75 percent of the registered family child care rate, if social services districts so desire.

6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.

9. Compliance schedule:

These provisions must be implemented effective on October 1, 2009.