

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 (OCFS) to establish rules, regulations and policies to carry out OCFS' powers and duties under the SSL.

Section 409-a of the SSL authorizes social services districts (districts) to provide preventive services to children and families under specified circumstances. Section 409-a(5)(a) of the SSL authorizes OCFS to establish regulations governing preventive services, including reimbursement limitations for such services. Section 153-k of the SSL specifies standards and conditions for state reimbursement of expenditures by districts for preventive and other child welfare services. Additional conditions for state reimbursement are set forth in the Education, Labor and Family Assistance portion of the state budget enacted for Fiscal Year 2007-2008 (Chapter 53 of the Laws of 2007) and in the state budgets enacted for prior fiscal years. The non-supplantation budgetary requirement in section 423.5(a)(3) of the regulation has been in place since April 1, 2003, and the budgetary child welfare threshold requirement in section 423.5(a)(4) of the regulation has been in place since April 1, 2005.

Part H of Chapter 57 of the Laws of 2007 ("the Act") requires that any preventive services provided pursuant to section 409-a of the SSL include performance or outcome-based provisions beginning January 1, 2008. The Act authorizes OCFS to limit, in accordance with regulations, a social services district's state reimbursement for preventive services expenditures in the absence of the required performance or outcome-based provisions. The Act also directs OCFS to grant a waiver from implementation of

the required performance and outcome-based provisions under specified circumstances and to promulgate on an emergency basis no later than August 15, 2007, any regulations necessary to implement the requirements established by the Act.

2. Legislative Objectives

The regulation carries out the intent of the statutory provisions discussed above, and in particular Part H of Chapter 57 of the Laws of 2007, by establishing rules that define the required performance and outcome-based provisions and specify the circumstances under and the manner in which OCFS may limit a district's state reimbursement in the absence of the required provisions. The regulation also carries out the intent of section 153-k of the SSL and related budget appropriation requirements by revising existing regulation to reflect the current statutory standards for state reimbursement of preventive services expenditures.

3. Needs and Benefits

The legislative requirement that preventive services include performance and outcome-based provisions is intended to promote the efficient use of state and local resources so that resources are used to achieve desired results. To effectuate this legislative intent, the regulation defines performance and outcome-based provisions and specifies the authorized fiscal consequence that may be imposed in the absence of the required provisions.

The regulation also updates regulatory conditions for state reimbursement of district expenditures for preventive services so that they are consistent with existing statutory and budgetary standards.

4. Costs

Because the amendment is necessary to implement Part H of Chapter 57 of the Laws of 2007 and other statutory standards governing state reimbursement for preventive services (SSL 153-k; Chapter 53 of the Laws of 2007), this regulatory amendment will not impose any costs on districts beyond those imposed by these laws. Technical assistance from OCFS, as required by statute, will assist local districts in meeting this statutory requirement. Additionally, based on discussions with districts, OCFS understands that many districts already include performance or outcome measures for the preventive services they provide or for which they contract, and thus many districts already satisfy the minimum standards required by statute and the implementing regulation.

There is no adverse fiscal impact to OCFS or the State related to the regulatory amendment.

5. Local Government Mandates

The requirement that social services districts include performance or outcome-based provisions in directly-provided and contracted-for preventive services and the conditions for state reimbursement implement statutory requirements and conditions. Therefore, the regulation does not impose any additional requirements on local governments.

6. Paperwork

OCFS is mandated by statute to report to the Governor and Legislature on local compliance with respect to performance or outcome-based provisions for preventive services. OCFS has developed a one-page attestation form for local districts to report on initial compliance. Subsequent reporting will be incorporated into existing district reporting procedures.

7. Duplication

This regulation does not duplicate other state or federal requirements.

8. Alternate Approaches

Part H of Chapter 57 of the Laws of 2007 requires OCFS to promulgate any regulations necessary to implement the statutory provisions. The regulation does this by defining the statutorily-required performance or outcome-based provisions for preventive services and by providing a fiscal consequence under certain circumstances if the statutory requirement is not met. Proposed definitions of performance and outcome were shared with representatives of regulated parties (commissioners and staff of local social services districts), their input was given careful consideration and appropriate suggestions were adopted in drafting the final regulation.

Insofar as the regulation codifies other existing statutory standards and conditions for state reimbursement the amendments are technical in nature and there were no significant alternatives to be considered.

9. Federal Standards

These regulations meet but do not exceed any applicable federal standards.

10. Compliance Schedule

Local districts must include performance or outcome-based provisions for preventive services by January 1, 2008. Other technical amendments to the regulation reflect existing statutory standards and conditions for state reimbursement of preventive services expenditures that are already in effect. This regulation is being filed on an emergency basis to comply with the statutory requirement that any necessary regulations be in place by August 15, 2007.