

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 of the Office to establish regulations for the administration of public assistance and care within the state.

Section 410-u of the SSL establishes the New York State Child Care Block Grant.

Section 410-w(1)(d) of the SSL governs eligibility for low-income families attending post secondary educational programs.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates for payments made under the New York Child Care Block Grant. Such rates must be sufficient to ensure equal access for eligible children to comparable child care assistance to children whose parents are not eligible to receive child care assistance.

Chapter 53 of the Laws of 2022 requires that the market rate for child care assistance payments be increased to the eightieth percentile. Chapter 56 of the Laws of 2022 requires the elimination of work requirements for persons also attending higher education.

42 U.S.C. §9858c(c)(4)(A) and federal regulation, 45 CFR §98.45(a) require that the state establish payment rates for federally funded child care assistance that are sufficient to ensure such equal access to care that is provided to children whose parents/caretakers are not eligible to receive assistance under federal or state programs.

Federal regulation 45 CFR 98.45(f)(2)(i) 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 (CCDF).

Federal regulation 45 CFR §98.45(l)(3)(i) requires that payment practices reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, including paying on a part-time or full-time basis, rather than paying for hours of service or smaller increments of time.

2. Legislative objectives:

This rule implements statutory requirements pursuant to the New York State Fiscal Year 2022-2023 Enacted Budget (Chapters 56 and 53 of the Laws of 2022) related to increasing the market rate to the eightieth percentile. The intent is to have child care assistance payment rates that reflect market conditions and that are adequate to enable families in receipt of child care assistance to access child care services comparable to other families not in receipt of a child care subsidy. Further eliminating hourly rate ensures compliance with 45 CFR 98.45(l)(3)(i) which requires payment on a full-time or part-time basis, rather than paying for smaller increments of time.

This rule also removes the 17.5-hour per week work requirement for families receiving child care assistance while pursuing post-secondary education in accordance with SSL 410-w(1)(d) as amended by Chapter 56 of the Laws of 2022. This will allow further flexibility for social services districts. Additionally, the removal of this requirement will allow parents to focus on their educational goals, which will promote greater self-sufficiency.

3. Needs and benefits:

This rule is necessary to comply with Chapter 53 of the Laws of 2022, which requires that the market rate for child care assistance payments be increased to the eightieth percentile. Increasing the market rate for child care assistance will aid in stabilizing the child care market, and allow families in receipt of child care assistance access to care comparable to families not in receipt of child care assistance.

The state is required under federal regulation 45 CFR 98.45(f)(2)(i) to adjust child care payment rates with each new State Plan based on a current survey of providers. The State Plan for the period October 1, 2021, through September 30, 2024, has been conditionally approved by the federal government. These regulations are needed to adjust existing rates that were established based on a survey completed in 2018. A more recent survey of providers was conducted by OCFS in 2022. Prior to conducting the 2022 survey, the composition of the county cluster groups was reassessed using the 2018 market rate survey data. No changes were made to the county cluster groups from 2018. The data was analyzed to establish market rates for child care subsidy at the 80th percentile of the prices reported by providers on the 2022 market rate survey, conducted by the OCFS Human Service Call Center. The reported rates were clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. The rates established for each cluster of counties are based on the prices that were reported in the survey. Adjustments to the child care assistance program market rates reflect

the market place and provide access comparable to the access of families not receiving a child care subsidy, which is required by federal and state law.

This rule is also necessary to comply with SSL 410-w(1)(d) as amended by Chapter 56 of the Laws of 2022 which removes the 17.5-hour per week work requirement for families receiving child care assistance while pursuing post-secondary education. Removal of this requirement can lead to greater success in the completion of a degree program for those families in receipt of child care assistance and would lead to more opportunities for such families to obtain long term employment in the communities in which they reside.

This rule is additionally necessary to remove hourly rates in accordance with 45 CFR 98.45(l)(3)(i) which requires payment on a full-time or part-time basis, rather than paying for smaller increments of time. With this amendment, a social service district will have the ability to apply a weekly, daily, or part-day rate as applicable. The definition of part-day rate will be amended to apply when child care assistance is provided for less than six hours per day.

Finally, this rule is necessary to amend the rate of payment for child care assistance provided to a child determined to have special needs. This amendment is necessary to ensure equity of practice, so that all families benefit equally from the policy. This will also allow approval for a special needs rate to be associated with the child, rather than with a specific provider. This will decrease the documentation burden on providers, as they will no longer be required to submit specific documentation to demonstrate their increased cost of providing child care services for a child with special needs.

4. Costs:

Under section 410-v(2) of the SSL, the state is responsible for reimbursing social services districts for seventy-five percent (75%) of the costs of providing subsidized child care services to public assistance recipients, and social services districts are responsible for the other twenty-five percent (25%) of such costs. The state is responsible for reimbursing social services districts for one hundred percent (100%) 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 in each social services district to that district's New York State Child Care Block Grant allocation for that year.

Under the New York State Budget for SFY 2022-2023, social services districts will receive allocations totaling \$894.6 million in federal and state funds under the New York State Child Care Block Grant. These allocations are in addition to \$548.8 million in available rollover of unspent funds from SFY 2020-21 and \$609 million in federal pandemic funding, which will support subsidy expansion in both SFY 2022-23 and SFY 2023-24. 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. Social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations.

The special needs rate will be provided as a percentage set forth by the office that is applied to the rates set forth under 18 NYCRR 415.9(h)(3). State reimbursement to localities will be consistent with the reimbursement described above. It is unknown what the cumulative cost will be as the special needs rate, as it currently is structured, is underutilized.

The removal of hourly rates will increase spending in limited circumstances. The hourly rate is currently only utilized in situations where care is provided to a child for less than three hours per day and less than 30 hours per week, or when care is provided for more than 12, but less than 15 hours per day. The part-day rate is already utilized when care is provided before or after school for less than three hours per day by day care centers or school-aged child care centers that do not charge on an hourly basis. Additionally, hourly rates are not used in calculating fiscal estimates and are not utilized by New York City.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services as authorized in regulation. Social services districts will need to review cases to determine whether the payments reflect applicable market rate. Payment adjustments will have to be made, as appropriate.

6. Paperwork:

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

Districts that elect to provide child care assistance for a caretaker in receipt of temporary assistance or that has income up to 200 percent to participate in a two-year college or four-year college program that leads to a degree must review and, if necessary, amend their Child and Family Services Plan to reflect the removal of the 17.5-hour work requirement.

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 98.45(a) and (f)(2)(i) which require that the state establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, and be based on a survey of providers. 45 CFR 98.45(l)(3)(i) requires that payment practices reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, including paying on a part-time or full-time basis rather than paying for hours of service or smaller increments of time.

9. Compliance schedule:

These provisions must be effective on June 1, 2022.

10. Alternative approaches:

No alternative approaches were considered since federal regulation requires that payment rates be based on a local market rate survey.