Regulatory Impact Statement

1) Statutory Authority:

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

Section 390(2-a) of the SSL requires OCFS establish regulations for licensed and registered child care programs that include minimum standards for health and infection control at such programs.

Section 410-x(3) of the SSL requires OCFS establish regulations for enrolled legally-exempt group child care programs that include minimum health and safety standards at such programs.

2) Legislative Objectives:

The legislative objective of SSL 390(2-a) and 410-x(3) authorizes OCFS to establish minimum standards to control communicable diseases at licensed, registered and enrolled legally-exempt group child care programs.

3) Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. The Centers for Disease Control and Prevention (CDC) has noted continued high community transmission of the Omicron COVID-19 variant, resulting in: 1) high caseloads of COVID-19 (7-day average of over 21,000 per day, as of January 26, higher than any point before this winter); 2) burdensome levels of hospitalizations (7-day average of over 1,100 admissions and 10,000 people currently hospitalized with COVID-19); and 3) a high number of COVID-19-related deaths (7-day average of over 150, rendering COVID-19 one of the leading causes of death in New York). These levels remain very high, despite some recent declines; thus the winter surge driven by the Omicron variant continues to be underway.

Properly wearing an appropriate mask is an effective measure to protect against the transmission of the COVID-19 virus, including its variants. Since the Omicron-related surge appears to have peaked in January, the statewide number of COVID cases has remained high and the number of hospitalizations continues to stress the healthcare system. While the percentage of New Yorkers who are fully vaccinated and boosted continues to increase, coverage levels alone are not adequate to curb the spread of the Omicron variant, and substantially reduce the burden on hospitals. The above findings demonstrate the necessity to extend the implementation of further
prevention strategies that include face coverings/masks in all indoor public places including licensed, registered and enrolled legally-exempt group child care programs. The extension of this requirement should help slow transmission and reduce the consequent increase in hospitalizations. COVID-19 spreads through respiratory droplets, and several studies have shown that appropriate face coverings/masks reduce the spray of droplets when worn correctly, fully covering one’s nose and mouth. Additionally, as noted by the CDC, multiple “real-world” studies have shown face coverings substantially decrease SARS-CoV-2 transmission. See for [https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html](https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html) (last updated December 6, 2021) for more information.

The CDC recommends universal indoor masking by all students (ages 2 years and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status. See [https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html) (last updated on January 13, 2022) for more information. This includes masking in early care education (ECE) and child care programs as explained below:


Finally, the American Academy of Pediatrics:

[S]trongly recommends that anyone over the age of 2, regardless of vaccination status, wear a well-fitting face mask when in public.” … Face masks can be safely worn by all children 2 years of age and older, including the vast majority of children with underlying health conditions, with rare exception. Children 2 years of age and older have demonstrated their ability to wear a face mask. In addition to protecting the child, the use of face masks significantly reduces the spread of SARS-CoV-2 and other respiratory infections within schools and other community settings. Home use of face masks also may be particularly valuable in households that include members who are in quarantine or isolation, as well as medically fragile, immunocompromised, or at-risk adults and children. See [https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/face-mask-guidance/](https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/face-mask-guidance/) (last updated on January 6, 2022) for more information.
4) Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Since 2020, OCFS has made funding available to child care programs to purchase personal protective equipment, including face coverings. Accordingly, this regulation will not have a significant cost impact on programs.

5) Local Government Mandates:

No new mandates are imposed on local governments by this rule.

6) Paperwork:

There is no new required paperwork.

7) Duplication:

This rule does not duplicate state or federal requirements.

8) Alternatives:

There are no alternatives. Without this rule, OCFS would not be meeting its statutory obligation to promulgate regulation that address the minimum health and safety standards for infection control.

9) Federal Standards:

This rule is consistent with applicable federal requirements.

10) Compliance Schedule:

Compliance with this rule will begin immediately.