

***The following is an assessment of Public Comment related to the Emergency Rulemaking to amend Part 415 of Title 18 of the New York Codes, Rules and Regulations, filed on June 1, 2022 and published on June 22, 2022, readopted as an Emergency and Notice of Proposed Rulemaking on August 29, 2022, and published on September 14, 2022, and readopted again as an Emergency and Notice of Proposed Rulemaking on October 27, 2022 and published on November 16, 2022 to allow for the completion of the public comment period.***

The Office of Children and Family Services (OCFS) has consolidated and responded in detail to all comments received since June 22, 2022, in its Assessment of Public Comment. The following is organized into major subject areas addressed by the public comment and the Office's responses thereto.

Comments were received from 12 sources; New York City Administration for Children's Services (ACS), Empire State Campaign for Child Care (ESCCC), Citizen Action of New York (CANY), Committee for Hispanic Children and Families (CHCF), Day Care Council of New York (DCCNY), Early Care & Learning Council (ECLC), The Schuyler Center for Analysis and Advocacy (SCAA), United Neighborhood Houses (UNH), ECE On the Move, Adirondack Birth to Three Alliance, Colleen Locke, and Robert G. Frawley.

**Regarding the need to demonstrate an increased cost of care to increase child care assistance payments:**

ECLC, ESCCC, DCCNY, CHCF, CANY, ECE On the Move, SCAA, and UNH encouraged OCFS to require local social services districts to automatically increase provider rates without requiring each provider to make an independent showing of the cost of care and to make rate increases applicable to all providers. They argue that demonstrating cost of care to apply for a higher reimbursement rate has proven to be an unnecessary administrative burden for both providers and administrators.

The commentators stated that the requirement that each provider make an individualized showing of their cost of care impacts equity as it serves as a disincentive for providers to serve private pay families as well as families in receipt of child care assistance.

Adirondack Birth to Three Alliance, Colleen Locke, and Robert G. Frawley opposed child care assistance payments being linked to what providers charge private pay families. Instead, it was recommended that private pay rates and assistance rates function independently of one another.

ACS encouraged OCFS to require local social services districts to automatically increase provider rates without requiring each provider to make an independent showing of the cost of care and to make rate increases applicable to all providers. ACS argues that demonstrating cost of care to apply for a higher reimbursement rate has proven to be an unnecessary administrative burden for both providers and administrators. ACS stated that the requirement for each provider to make an individualized showing of their cost of care impacts equity as it serves as a disincentive for providers to serve private pay families as well as families in receipt of child care assistance.

ACS urged OCFS to amend the regulations to permit local districts the discretion to offer a universal increase in provider rates without requiring a determination of the cost of care for the reasons outlined above.

The purpose of establishing child care market rates for the child care assistance program is to provide families in receipt of child care assistance with access to child care services that are comparable to families not eligible for child care assistance. Child care assistance maximum payment rates are a reflection of the child care market and are not intended to guide what a provider should charge. They indicate the maximum amount that local social services districts can be reimbursed for child care assistance expenditures. The local district is required to pay the cost of care, up to, but not in excess of, the applicable child care market rate.

The proposed changes to 18 NYCRR 415.9(h)(4) will be adopted as published.

**Regarding changes to the special needs rate in §415.9(h)(4):**

DCCNY, ESCCC, ECLC, UNH, SCAA, ECE On The Move, ACS, CANY support the change in the determination of the special needs rate at § 415.9(h)(4) by removing cost of care from the determination and reducing the administrative burden placed on providers. ACS supports the change in the determination of the special needs rate in §415.9(h)(4) by removing cost of care from the determination and reducing the administrative burden placed on both providers and administrators.

The proposed changes to 18 NYCRR 415.9(h)(4) will be adopted as published.

**Regarding changes to the market rate percentile:**

UNH, ECLC, SCAA, ECE On The Move, ACS, CANY, CHCF, DCCNY, ESCCC support the increases the child care provider reimbursement rates to the 80th percentile of the new market rate survey.

ACS supports increasing the child care provider reimbursement rates to the 80th percentile of the new market rate survey.

The proposed changes to 18 NYCRR 415.9(h)(4) will be adopted as published.

**Comments outside of the scope of the Notice of Proposed Rule Making:**

ESCCC, CANY, CHCF, SCAA, and ECLC recommend:

OCFS publicize this expanded assistance using new and creative methods. Additionally, CHCF identified that families will need to be reached in ways that are culturally and linguistically responsive and supportive towards access.

No changes have been made to the regulations in response to this comment. However, please note that OCFS and local districts are working to publicize this and other changes to the Child Care Assistance Program and agree with the recommendation.

ESCCC, CANY, CHCF, SCAA, and ECLC recommend Governor Hochul sign and swiftly implement A.1029 (Lunsford)/S.9029 (Ramos), which would permit districts to authorize families to receive child care assistance for up to 24 months between eligibility determinations. Additionally, they encourage Governor Hochul to sign and swiftly implement A.7661 (Hevesi)/S.6655-A (Brisport), which would decouple child care assistance from the parent or caretaker's work hours.

This recommendation is outside the scope of this regulatory package.

No changes have been made to the regulations in response to this recommendation.

ESCCC, CANY, CHCF, SCAA, ECLC, DCCNY, UNH and ACS recommended amendments to 18 NYCRR § 415.1(o)(1)(i) and (ii) to eliminate the requirement to earn wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law for the type of employment. Additionally, they expressed strong support for regulatory amendments regarding changes to the increasing eligibility from 200% to 300% of the state income standard, provided the family income does not exceed 85% of the state median income at § 415.2.

To the extent this recommendation is outside the scope of this regulatory package, no changes have been made to the regulations in response to this recommendation.

UNH recommends OCFS set the differential rate at 15% across all local social service districts; to assure providers serving the most vulnerable children have access to the highest rate possible.

The special needs rate is set at 15% across districts, separate from regulatory differential rates. Differential rates are outside the scope of this regulatory package. No changes have been made to the regulations in response to this recommendation.