

## Regulatory Flexibility Analysis for Small Businesses and Local Governments

### 1. Effect on Small Businesses and Local Governments

The proposed regulations will affect local departments of social services (LDSSs) and the approximately 83 voluntary authorized agencies in New York State.

### 2. Compliance Requirements:

The proposed regulations would add new criteria for eligibility requirements for the new rate category for extraordinary foster care services in a family foster home setting. In addition to the specific criteria of extraordinary level of needs a foster child must meet to be eligible for the new extraordinary rate, the foster parents are required to satisfy a number of conditions in order to qualify to receive state reimbursement at the new extraordinary rate.

Specifically, in order to be eligible to receive the extraordinary rate, the foster parents must have the ability to be readily accessible to meet the foster child's need on an ongoing and emergent needed basis. The foster parents must only have one foster child placed in the home at a time and be able to demonstrate their ability to care for foster children with special, exceptional, or extraordinary conditions through past training and experience in nursing, special education, child care, or the completion of or participation in special training provided by an authorized child caring agency or other relevant training and experience. In order to be eligible for the extraordinary rate, the foster parents must actively participate in not less than eight hours of agency training per year. They must also actively participate in case conferences as determined by the authorized agency, daily reports of the foster child's progress, weekly foster parent group meetings, and individualized skills training and coaching for youth. In addition, the foster parents must actively support implementation of an individualized behavior management program daily in the home and individualized therapy for the youth, including implementing strategies in the home identified as part of the foster child's treatment plan. Finally, to comply with the itemized eligibility requirements to qualify for state reimbursement at the extraordinary rate, the foster parents must be able to provide the intensive supervision and interpersonal relationships that are consistent with the child's therapeutic goals, including the ability to work with the professionals involved in

the treatment plan, such as physicians, nurses, social workers, psychologists, and psychiatrists. Foster parents must also be able to accept assistance and guidance in caring for the child.

Part O of Chapter 56 of the Laws of 2022 amended section 398-a of the Social Services Law to provide that LDSSs already paying 100% of the foster parent rate set by the Office of Children and Family Services (OCFS) must continue to pay those rates, and those paying less than 100% must increase their payments to half the difference between the rate they pay now and 100% for the rate year 2022-23, and then pay the full rate set by OCFS for the 2023-24 rate year. The proposed regulations would also make several conforming changes to regulations, including applying the statutory change to adoption subsidy and kinship guardianship assistance (KinGAP) payments for initial adoption subsidy and KinGAP agreements entered into on or after September 1, 2023.

The proposed regulations would remove the current barrier that prevents therapeutic foster parents from receiving respite care and services and would amend the standards for the duration of eligibility for respite care and services. The proposed regulations would also amend 18 NYCRR 435.10 to repeal the conditions for reserved accommodations for respite care and services for foster family boarding homes and emergency foster family boarding homes, and would change an outdated reference to the prior Office of Mental Retardation and Developmental Disabilities to its successor, the Office for People With Developmental Disabilities. Finally, the proposed regulations would amend 18 NYCRR 441.22 to correct a reference to a subparagraph relating to risk assessments for newborn children regarding HIV.

3. Professional Services:

The proposed regulations would not impose any new requirements regarding professional services.

4. Compliance Costs:

Anticipated foster care and adoption costs associated with the proposed regulations are negligible.

5. Economic and Technological Feasibility:

No economic or technological barriers have been identified that would prohibit implementation of the proposed regulations.

6. Minimizing Adverse Impact:

To minimize adverse impact, funding for compliance costs with these regulations as well as Part O of Chapter 56 of the Laws of 2022 will be split between the federal, state and local governments, per the existing funding stream requirements. Additionally, some provisions will not take effect until September 1, 2023.

7. Small Business and Local Government Participation:

OCFS has engaged in a process of receiving extensive and robust feedback on the proposed regulations. This includes a Statewide Implementation Team (SIT) that includes representation from various voluntary authorized agencies including some that may be considered small businesses. OCFS has also put forth a series of webinars and presentations geared for these entities in all areas of the state. More specifically, OCFS presented the concept of the new extraordinary rate to stakeholders at a webinar on the federal Family First Prevention Services Act and at a webinar for Institutions of Mental Diseases (IMDs).

8. For rules that either establish or modify a violation or penalty:

The proposed regulations would not establish or modify an existing violation or penalty.