

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

Section 34(3)(f) of the SSL authorizes OCFS to establish regulations for the administration of public assistance and care within the state.

Section 390(1)(d), (e), and (f) of the SSL set forth that group family day care providers, family day care providers, and school-age child care programs may provide care for school-age children during those periods of the year in which school is not in session.

Section 390(2)(d)(i) of the SSL authorizes the Office to establish regulations for the licensure and registration of child day care providers.

Section 410-x(3) of the SSL authorizes the Office to promulgate regulations that establish minimum health and safety requirements for providers that provide child care funded under the New York State Child Care Block Grant.

2. Legislative Objectives:

To provide appropriate care for children, Social Service law empowers the Office of Children and Family Services to promulgate any necessary regulations in order to ensure the care and safety of children in child care settings. Current regulations involve how care will be provided, and what subsidy can pay for, during non-school hours. Current regulations do not contemplate the COVID-19 pandemic, which would create the need for remote or virtual school options.

3. Needs and Benefits:

Under existing regulations, school-aged children are not allowed to attend child care programs (nor can subsidy funds be expended for child care) during the regular school day, when school is in session. However, this does not take into account the new challenges beginning with the 2020-21 school year, which include remote learning and/or hybrid learning. A school-age child attending school remotely may still need adequate supervision from a child care worker. The federal Office of Child Care released guidance on August 10, 2020 that supports subsidy being paid for child care during remote and/or virtual learning opportunities. This would codify that understanding into OCFS regulations. The 2020-21 school year will begin in early September 2020, and the Office would like to clarify any confusion for providers about when school-age children are allowed to be served in child care programs.

This rule is necessary to clarify interpretation of Social Services Law 390 as to when school-age children may attend child care programs during the academic school year and align with federal guidance regarding when child care subsidy may be used for school-age children attending child care programs during the academic school year. As schools transition to hybrid and/or remote learning options in response to the COVID-19 emergency, some school-age children may still need adequate supervision on weekdays by child care programs. These

regulations will clarify when this is allowable by defining “non-school hours” and “those periods of the year in which school is not in session” to be any time a specific child is not physically required to be present in school as part of the regular school day, including during virtual and/or remote learning.

4. Costs:

No additional costs will be assessed on providers, the State, or the Office with this regulation. Families in receipt of child care subsidy will be able to use these funds for care provided to school-age children during the day when children are not required to be physically present in school.

5. Local Government Mandates:

No new mandates are imposed on local governments by these proposed regulations; however, districts will be able to authorize child care subsidy for school-age children during the day when these children are not required to be physically present in school.

6. Paperwork:

There is no new required paperwork; however, child care programs and families may choose to enter into an agreement that outlines the expectations.

7. Duplication:

The new regulations do not duplicate state or federal requirements.

8. Alternatives:

Without this regulation, some school-age children will be without supervision while participating in remote learning. The agency felt the regulations would provide the most clarity to the field, including local social service districts who are authorized to pay for child care subsidy during remote learning. Guidance alone would not be sufficient if the regulations were interpreted to not allow care during the school day during remote learning.

9. Federal Standards:

The regulations are consistent with applicable federal requirements.

10. Compliance Schedule:

Compliance with the proposed regulations would begin immediately.