

Regulatory Impact Statement

1. Statutory Authority:

The federal Family First Prevention Services Act (FFPSA) enacted as part of the Bipartisan Budget Act of 2018 (P.L. 115-123) requires states to adopt a myriad of provisions regarding foster care services on or before September 29, 2021.

Part L of Chapter 56 of the Laws of 2021 codified the state statutory requirements necessary for FFPSA compliance. Paragraph (d) of section 17 of such Chapter authorizes the Office of Children and Family Services (the Office) to adopt regulations necessary for FFPSA implementation on an emergency basis.

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of the Office to establish regulations for the administration of public assistance and care within New York State.

Section 371(22) of the SSL, as codified by Part L of Chapter 56 of the Laws of 2021, provides that a new category of qualified residential treatment programs (QRTP) exception known as “supervised settings” shall operate in accordance with regulations adopted by the Office.

Section 409-h of the SSL, as codified by Part L of Chapter 56 of the Laws of 2021 set forth requirements for assessments by a qualified individual when placement of a child into a QRTP is contemplated or made of or after September 29, 2021, including requirements for the assessments and involvement in the assessments by a family and permanency team.

Section 462(1)(a) of the SSL requires OCFS to adopt regulations concerning standards of care, treatment and safety applicable to all facilities exercising care or custody of children.

2. Legislative Objectives:

Chapter 436 of the Laws of 1997 created the Office to take on the functions, powers, duties and obligations in the SSL concerning foster care, adoption services, adoption assistance, child protective services, preventive services for children and families, services for

pregnant adolescents, day services, and other services and programs identified in Article 6 of the SSL regarding the care and protection of children and under the structure and authority of Article 2 of the SSL.

The objective of Part L of Chapter 56 of the Laws of 2021 was for New York State to come into compliance with FFPSA and for children in foster care to be served in the least restrictive setting that may appropriately meet their needs.

This proposed rule would comply with federal statute, allowing localities to retain IV-E funding.

The provisions cited above clearly provide the Office with the authority to create this regulation and to do so on an emergency basis.

3. Needs and Benefits:

This rule would adopt provisions and standards necessary to operationalize compliance with FFPSA and the corresponding state legislation related thereto (Part L of Chapter 56 of the Laws of 2021), on or before September 29, 2021. Among other things, FFPSA enacted provisions require new types of congregate foster care programs to be operated by voluntary authorized agencies. Specifically, qualified residential treatment programs (QRTPs); and QRTP exceptions, which include supervised settings; specialized programs to serve prenatal, postpartum, or parenting youth; and programs for youth who have been or are at risk of sex-trafficking. Moreover, FFPSA, set forth certain requirements that must be met by states, regarding when placement of a child in foster care is made into a QRTP, including requirements for casework documentation, certain reviews that must be conducted if foster children in certain age groups remain placed in QRTPs for specified extended periods of time (long stayer reviews) and after care services that must be provided.

These regulations, among other things, would adopt robust requirements regarding the health, safety, and programmatic standards for prospective QRTP and QRTP exception programs to obtain and maintain operating certificates from the Office as are necessary to provide these types of residential services to children. These regulations would also put in place measure, consistent with state and federal law, to reduce placement of children in foster care into higher levels of care when it is determined that the needs of the child can appropriately be met in a less-restrictive setting.

Adoption of these regulations are necessary for New York to continue to receive federal Title IV-E reimbursement. Such federal funding stream presently provides reimbursement for various eligible child welfare related expenditures.

4. Costs:

Failure to adopt these regulations may result in a loss of the ability for New York to receive any federal Title IV-E reimbursement. This funding stream provides approximately \$600 million annually in federal reimbursement to New York State and local governments (counties and New York City).

Adoption of requirements tied to state and federal law as contained within these regulations are expected to result in a modest cost to New York State, LDSSs and voluntary authorized agencies. Anticipated costs are expected to be substantially less than the potential for loss of federal reimbursement. New costs are anticipated to be incurred in regard to: assessments required to be conducted by qualified individuals; long stayer reviews; creation of QRTPs and QRTP exceptions; and aftercare. Impact of these costs on the state, LDSSs and voluntary agencies was considered as part of the budget making process for the enacted budget for State Fiscal Year 2022. Funding streams that may be available to support these various new costs include, federal Title IV-E reimbursement; Medicaid reimbursement; foster care block grant; child welfare financing, state general fund (state operations) and local tax levy dollars.

5. Local Government Mandates:

These regulations adopt various federal mandates that local departments of social services (LDSS) must meet in order for New York State and local governments to continue to receive federal Title IV-E reimbursement (approximately \$600 million annually). In accordance with state and federal law, these regulations would adopt mandates for LDSS regarding when placement of a child into a QRTP is contemplated or made on or after September 29, 2021, including requirements regarding: conducting an assessment in accordance with SSL section 409-h; the role of the family and permanency team; case record documentation; long stayer reviews; and after care and discharge planning.

6. Paperwork:

The proposed regulations would require the LDSS to document certain information in the case contact notes related to the formation and involvement of the family and permanency team, for all children placed in a QRTP. Moreover, the proposed regulations require the LDSSs document specified information for “long stayer reviews” where children in foster care remain in QRTPs for extended periods of time.

Among other things, these regulations would establish the requisite health, safety, and programmatic standards for the issuance of an operating certificate or approval for initial and continued operation of a program as a QRTP or QRTP exception including paperwork requirements that voluntary authorized agencies must meet such as maintaining specified policies and manuals and documenting specific information in a case record when a child is placed into a QRTP.

7. Duplication:

The proposed regulations would comply with, but are not duplicative other state or federal requirements.

8. Alternatives:

No alternative approaches to implementing the changes to regulation were considered as the requirements are mandated by federal and state law.

9. Federal Standards:

The proposed regulations would adopt various federal requirement in FFPSA and are not in conflict with current federal standards.

10. Compliance Schedule:

Compliance with the proposed regulations would begin immediately upon filing with the Department of State