

Regulatory Impact Statement

1. Statutory Authority:

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

Section 34(3)(f) of the SSL authorizes the commissioner of OCFS to establish regulations for the administration of public assistance and care within New York State, both by the State and by local government units.

Chapter 436 of the Laws of 1997 transferred certain functions, powers, duties and obligations of the former Department of Social Services and all of the functions, powers, duties and obligations of the former Division for Youth to OCFS.

Chapter 323 of the Laws of 2008 amended sections 412, 413, 415, 422, 424-a, 424-b, 424-c and 460-c of the SSL and created sections 412-a and 424-d of the SSL to clarify the definitions of abuse and neglect of a child in residential care and strengthen the process used to investigate and respond to such allegations. Section 19 of Chapter 323 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provisions of the Chapter.

2. Legislative objectives:

The regulations implement Chapter 323 of the Laws of 2008 relating to the protection of children in residential facilities from child abuse and neglect. Specifically, the regulations implement the updated statutory definitions and requirements for additional determinations relating to reports of child abuse and maltreatment in residential settings that were enacted in the new sections 412-a and 424-d of the SSL. For example, residential care now includes inpatient or residential settings certified by the Office of Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth, and care provided by an authorized agency licensed to provide both foster care and residential care as licensed or operated by OASAS.

The regulations also implement statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard. In addition, the regulations make technical changes, such as updating outdated references to the former Department of Social Services and the former Division for Youth.

3. Needs and benefits:

The regulations are necessary for OCFS to conform to statutory changes to the SSL relating to the protection of children in residential facilities from child abuse and neglect. Specifically, the regulations clarify and update the definitions of abuse and neglect of a child in residential care and strengthen the process used to investigate and respond to such allegations. For example, residential care now includes inpatient or residential settings certified by the Office of

Alcoholism and Substance Abuse Services (OASAS) and designated as serving youth, and care provided by an authorized agency licensed to provide both foster care and residential care as licensed or operated by OASAS. Additionally, the statute and regulations require an immediate law enforcement referral in the event that an investigation reveals that it is likely that a crime may have been committed against a child.

The regulations are also necessary to conform the regulations to the statutory changes, which reflect existing practice, in conformance with past federal and state court decisions, requiring that administrative review and fair hearing determinations of child abuse and maltreatment be made using the fair preponderance of the evidence standard.

The regulations will not apply to incidents that occur before January 17, 2009, which is the effective date of the statutory changes.

4. Costs:

The regulations are necessary to comply with the enactment of Chapter 323 of the Laws of 2008. The fiscal impact to OCFS is \$397,000 for six positions and associated non-personal service expenses.

5. Local government mandates:

For local governments that operate residential facilities for children, the regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

6. Paperwork:

The regulations require that a copy of a facility's and licensing state agency's corrective action plan or plan of prevention and remediation be sent to OCFS if OCFS conducted the investigation of the abuse or neglect, even where the facility is licensed by another State agency. This adds one copy of a report to the paperwork already required to be sent to the licensing State agency under the current statutory and regulatory standards.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

The proposed regulations are required to implement the state law, Chapter 323 of the Laws of 2008. No alternatives were considered.

9. Federal standards:

The regulations and Chapter 323 of the Laws of 2008 are consistent with the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA), which does not have special requirements pertaining to children in residential care.

10. Compliance schedule:

Chapter 323 of the Laws of 2008 provides for a January 17, 2009 effective date of the changes set forth in the regulations. For purposes of transition between the former statutory and regulatory provisions and the new law, the effective date will apply to the date when the abuse or neglect was alleged to have occurred. If a report came in on or after January 17, 2009 that involves an incident or incidents that occurred before January 17, 2009, the former definitions of abuse and neglect of children in residential care will apply.