

## **Regulatory Flexibility Analysis**

### **1. Effect on small businesses and local governments:**

There are approximately 15,000 licensed/registered child care programs, 2,100 permitted group day care programs, and 6,000 enrolled legally exempt child care programs in New York State, and 58 social services districts affected by this rule.

### **2. Compliance requirements:**

All 58 social services districts will be required to continue making payments for child care assistance based on the applicable market rates. Social services districts will need to review all cases to determine whether the payments reflect the applicable market rate increases and changes to the special needs rate. Payment adjustments will have to be made, as appropriate.

Districts that elect to provide child care assistance for a caretaker in receipt of temporary assistance or that has income up to 200 percent of the state income standard to participate in a two-year college or four-year college program that leads to a degree must review and, if necessary, amend their Child and Family Services Plan to reflect the removal of the 17.5-hour work requirement.

### **3. Professional services:**

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

### **4. Compliance costs:**

Under section 410-v(2) of the Social Services Law, the state is responsible for reimbursing social services districts for seventy-five percent (75%) of the costs of providing subsidized child care services to public assistance recipients; social services districts are responsible for the other twenty-five percent (25%) of such costs. In addition, the state is responsible for reimbursing social services districts for one hundred percent (100%) of the costs of providing child care services to other eligible low-income families. The state reimbursement

for these child care services is made from the state and/or federal funds allocated to the New York State Child Care Block Grant, and is limited in each district to that district's New York State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2022-2023, social services districts will receive allocations totaling \$894.6 million in federal and state funds under the New York State Child Care Block Grant. These allocations are in addition to \$548.8 million in available rollover of unspent funds from SFY 2020-21 and \$609 million in federal pandemic funding, which will support subsidy expansion in both SFY 2022-23 and SFY 2023-24. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

The special needs rate will be provided as a percentage set forth by the office that is applied to the rates set forth under 18 NYCRR 415.9(h)(3). State reimbursement to localities will be consistent with the reimbursement described above. It is unknown what the cumulative cost will be as the special needs rate, as it currently is structured, is underutilized.

The removal of hourly rates will increase spending in limited circumstances. The hourly rate is currently only utilized in situations where care is provided to a child for less than three hours per day and less than 30 hours per week, or when care is provided for more than 12, but less than 15 hours per day. The part-day rate is already utilized when care is provided before or after school for less than three hours per day by day care centers or school-aged child care centers that do not charge on an hourly basis.

**5. Economic and technological feasibility:**

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

**6. Minimizing adverse impact:**

OCFS believes there will be minimal adverse impact associated with implementing this rule. The market rates were developed in accordance with federal guidelines for conducting a market rate survey of child care providers, using standard statistical methodology, to minimize adverse impact. Approximately 4,500 licensed and registered child care providers (including New York City permitted group day care programs) completed the survey. Prior to

conducting the 2022 survey, the composition of the county cluster groups was reassessed using the 2018 market rate survey data. No changes were made to the county cluster groups from 2018. The data was analyzed to establish market rates for child care subsidy at the 80th percentile of the prices reported by providers on the 2022 market rate survey. The reported rates were clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. The rates established for each cluster of counties are based on the prices that were reported in the survey. Adjustments to the child care assistance program market rates reflect the market place and provide access comparable to the access of families not receiving a child care subsidy.

Adjustments to the child care assistance market rates reflect the current child care market place. These rate adjustments provide comparable access for families receiving child care assistance to those families not receiving child care assistance, as required by federal and state laws. The adjustments in the market rates will enable social services districts to provide temporary assistance (TA) recipients and low-income families receiving subsidized child care services with access to child care providers. This will enable temporary assistance and low-income families to work, thereby reducing the number of families in need of TA. It also should assist the districts in meeting their federal participation rates for TA recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

The standard rates for informal child care providers are sixty-five percent (65%) of the applicable rates for registered family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider. The enhanced rates for informal child care providers are seventy percent (70%) of the applicable rates for registered family day care. The additional five percent (5%) provides an incentive to informal child care providers to pursue a minimum of 10 hours of approved training. Additionally, the regulation allows local social services districts, which so choose in their Child and Family Services Plans, to increase the enhanced rate up to seventy-five percent (75%) of the applicable registered family day care rate.

The rates for legally exempt group child care are seventy-five percent (75%) of the rates for day care centers. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a licensed day care center. Additionally, the regulation allows local social services districts, which so choose in their Child and Family

Services Plans, to establish one or two enhanced rates for eligible legally exempt group child care programs, each of which may be up to eighty-one percent (81%) of the applicable day care center rate.

Removal of the hourly rates for child care assistance will provide social services districts with the ability to apply a weekly, daily, or part-day rate, as applicable. The definition of part-day rate will be amended to apply when child care assistance is provided for less than six hours per day. The number of cases that will be affected by the removal of the hourly rate will be minimal. By removing the hourly rate within regulation, OCFS will become compliant with federal regulation 45 CFR 98.45(l)(3)(i) that requires payment practices reflect generally-accepted payment practices of child care providers that serve children who do not receive Child Care Development Fund subsidies, including paying on a part-time or full-time basis, rather than paying for hours of service or smaller increments of time.

The amendment to the rate of payment for child care assistance provided to a child determined to have special needs will provide families receiving child care assistance with greater access to child care services. This rate is a percentage specified by the office that is applied to the rates set forth under 18 NYCRR 415.9(h)(3). The parent must demonstrate that the special needs of the child result in an additional child care-related service beyond what is generally required by children of a similar age and the total cost of providing child care services exceeds the applicable market rate. Recently, OCFS has conducted numerous calls with local districts where several districts have indicated that the providers in their communities are not willing to provide care for children with special needs who are receiving child care assistance. With these changes to the rate of payment for children determined to be special needs and amending the requirements to allow for the parent and/or caretaker to submit documentation with the provider, a provider may be more willing to provide care for this population and will allow for greater access to child care services for these children. This amendment will more closely associate the special needs rate with the child, rather than with a specific provider.

## **7. Small business and local government participation:**

In accordance with federal regulatory requirements, OCFS conducted a market rate survey of licensed/registered child care providers from across the state, in all modalities of care, and serving children of different ages. Prior to conducting the survey, a letter was sent to all regulated child care providers to inform them that they might be contacted to participate in

the market rate survey. A copy of the survey questions was also sent so that providers could prepare responses. The Human Services Call Center conducted the survey by telephone and online, on behalf of OCFS. Surveys were conducted in English and in Spanish, as needed, with resources available to assist providers in other languages, if needed, as well. Rate data was collected from approximately 4,500 providers and that information formed the basis for the updated market rates.

OCFS has also conducted district calls with social services districts where many district staff vocalized support of new market rates and the need for a modification on how the special needs rate is applied to child care assistance cases. OCFS will provide guidance, technical assistance, and outreach to those that are impacted by this rule. Specifically, OCFS will assist social services districts that need to update their Child and Family Services Plan to reflect the removal of the 17.5-hour work requirement listed in Appendix L. OCFS will send notice of this rule via email to all child care programs for which it has valid email addresses and post this information on the OCFS child care website. This will include the contact information of someone in OCFS to answer questions on this rule and the email address of the regulations' mailbox ([regcomments@ocfs.ny.gov](mailto:regcomments@ocfs.ny.gov)) to provide public comments