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 and the approximately 83 voluntary authorized agencies in New York State.

2.   Compliance Requirements:

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. Among other things, FFPSA enacted provisions requiring 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 adopt various federal mandates that local departments of social services (LDSS) and voluntary authorized agencies must meet in order for New York State and local governments to continue to receive federal Title IV-E reimbursement (approximately $600 million annually).

Specifically, 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.

3.   Professional Services:

These regulations would establish minimum nursing services that must be available in QRTPs as required by federal law.   These regulations would also adopt provisions for a qualified individual conducting an assessment regarding whether a QRTP placement is appropriate be licensed clinician as is required by state statute.

4.   Compliance 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).

5.   Economic and Technological Feasibility:

No economic or technological barriers have been identified that would prohibit implementation of these regulations as written.

6.   Minimizing Adverse Impact:

These regulations would adopt federal and state mandated provisions. To minimize adverse impact, provisions allowing programs to request and receive a waiver from regulatory requirements in appropriate circumstances, are being proposed.

7.   Small Business and Local Government Participation:

The Office has engaged in a process of receiving extensive and robust feedback on FFPSA implemented. This includes a Statewide Implementation Team (SIT) that involves representation from various voluntary authorized agencies including some that may be considered small businesses. The Office has also put forth a series of webinars and presentations geared for these entities for all areas of the state.

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.