

fectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(j) Section 32.05 of the MHL provides that no substance use disorder services may be established without an Operating Certificate issued by the commissioner.

(k) Section 32.07(a) of the MHL authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of article 32 of the MHL.

(l) Section 32.09 of the MHL contains criteria that the Commissioner must consider when issuing an operating certificate.

(m) Section 32.20 of the MHL authorizes the Commissioner to appoint a Temporary Operator.

(n) Section 32.21 of the MHL provides the Commissioner with the authority to suspend, revoke or limit operating certificates and imposition of fines.

(o) Section 32.29 of the MHL authorizes the Commissioner to approve the construction of a facility for which an operating certificate will be issued.

(p) Section 32.31 of the MHL provides the process for the establishment or incorporation of facilities for addiction services.

(q) Section 406 of the Business Corporation Law requires any corporation which intends to establish or operate a program of services for services to obtain the approval of the Commissioner as to the proposed filing of its certificate of incorporation.

(r) Section 404(u) of the Not-For-Profit Corporation Law gives the Commissioner the responsibility of approving the certificate of incorporation of any corporation which intends to establish or operate an addiction program Certified by the Office.

(s) The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) establishes the Justice Center for the Protection of People with Special Needs (Justice Center) and requires criminal information history reviews of all applicants for authorization to operate a program of services for addiction; and of all employees, contractors, or volunteers of such certified program who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the patients or clients of in such programs.

(t) 42 CFR 431.110 relates to federal requirements that New York State's Medicaid State Plan provide for the acceptance of Indian Health Services facilities as a Medicaid provider on the same basis as any other qualified provider.

2. Legislative Objectives: Part 810 (Establishment, Incorporation and Certification) was revised at this time because it contained outdated and unnecessary terminology, and needed to be revised to as to better reflect current practice in the Agency. The objectives in making these edits were to make the certification process more clear to providers in order to provide safe, effective, and efficient addiction support programs that reflect the needs of the clients. By making the requirements more clear to providers and prospective providers, it should be easier for providers and prospective providers to comply with the standards set forth in the regulations in creating and maintaining quality programs.

3. Needs and Benefits: OASAS is updating the language used in this regulation consistent with amendments made to other OASAS regulations. These updates include using less stigmatizing and more person centered terminology, using gender neutral language, updating the name of the Agency, and updating outdated definitions. Other amendments made were specifically to clarify certification requirements, and to include statutory language that has been added and/or updated since the time that the regulation was last updated. Standards for approving a certification application for full or administrative review was updated to clarify the policy requirement that 10% of the owners or principals or board members of an applicant program must have substantial experience directly providing or managing substance use disorder treatment services, as determined by the office. The reason for this clarification is that it is essential for an applicant to demonstrate that there is sufficient knowledge within the ownership and management of an applicant to successfully implement substance use disorder services. These criteria by which this will be reviewed is currently drafted as "guidance" for applicants. This section also includes language to clarify the requirements that must be met by an applicant, as well as provides for the inclusion of gender neutral facilities.

Previously there were several references to "a reasonable time" in the regulation in relation to certain steps of the applicant approval process. Definitions for these time frames were clarified in the regulation so as to align with current practice of the agency. A "provisional certification" was included in the types of operating certificates issued by the office to allow for a provisional certificate to be issued to an applicant by the Commissioner. The requirement that an additional location must be operated in the same or contiguous county as the original was eliminated to align with other OASAS regulations.

The Inspection and Review section of the regulation was amended to clarify the requirements for providers. A provision for appointment of a

Temporary Operator was also included in the amended regulation, as it was a statutory provision added to the mental hygiene law in the time since the regulation was last updated. The authority for this comes from Section 32.20 of the Mental Hygiene law, and the regulation simply includes the requirements in the law.

4. Costs: No additional administrative costs to the State, agency, local governments or regulated parties are anticipated.

5. Paperwork: There is no additional paperwork beyond what is already required.

6. Local Government Mandates: There are no new local government mandates.

7. Duplication: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives: The alternative is to leave the regulation as it currently reads, with language inconsistent across Title 14 regulations and out of date terminology. To remove any inconsistencies and potential confusion among providers, this alternative was deemed unacceptable.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

OASAS has determined that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments because the amended regulation does not impose any new requirements on providers or applicants beyond what is already required by the Office. The amendments only update outdated and stigmatizing language, and clarify certification process requirements to align with practice.

Rural Area Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas because the amended regulation does not impose any new requirements on providers or prospective applicants beyond what the office already requires. The amendments only update outdated and stigmatizing language, and clarify certification process requirements to align with practice.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for this rulemaking. OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities because the amended regulation does not impose any new employment or training requirements on applicants or providers of services. The amendments only update outdated and stigmatizing language, and clarify certification process requirements to align with practice.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Executive Compensation

I.D. No. CFS-33-22-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: This is a consensus rulemaking to repeal Subpart 166-5 of Title 9 NYCRR and Part 409 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f)

Subject: Limits on executive compensation.

Purpose: To remove the limits on executive compensation and administrative expenses.

Substance of proposed rule (Full text is posted at the following State website: <https://ocfs.ny.gov/main/legal/regulatory/pcon/>): Complete repeal of Subpart 166-5 of Subtitle E of Title 9.

Complete repeal of Part 409 of Title 18.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa Vasnani, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 474-8310, email: regcomments@ocfs.ny.gov

Data, views or arguments may be submitted to: Same as above.
Public comment will be received until: 60 days after publication of this notice.

Consensus Rule Making Determination

This rule is exempt from the formal rule making process because it is being proposed as a consensus rule making. This rule is proposed by the Office of Children and Family Services as a consensus rule making pursuant to the expectation that no person is likely to object to its adoption because it merely repeals regulatory provisions which are no longer applicable to any person. The regulatory provisions were established by Executive Order 38 (issued by Governor Andrew Cuomo on January 18, 2012) by exercising the authority of the Commissioner of the Office of Children and Family Services to issue regulations governing the use of State funds and State-authorized payments in connection with providing program services to members of the public. Executive Order 38 provided for a limit on administrative expenses and executive compensation of providers of program services in order to meet the State’s ongoing obligation to ensure the proper use of taxpayer dollars and the most effective provision of such services to the public. Executive Order 38 was not among those listed as continued by Governor Kathy Hochul in Executive Order 6 issued on October 8, 2021.

Job Impact Statement

A job impact statement is not required for this rulemaking because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

**PROPOSED RULE MAKING
 NO HEARING(S) SCHEDULED**

Direct Deposit for Child Care Providers Receiving Child Care Assistance

I.D. No. CFS-33-22-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Part 415 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 390-c

Subject: Direct deposit for child care providers receiving child care assistance.

Purpose: To implement requirements of section 390-c of the Social Services Law, as amended by chapter 650 of the Laws of 2021.

Text of proposed rule: Paragraph (3) of subdivision (a) of section 415.5 of Title 18 NYCRR is amended to read as follows:

(3) A social services district must establish at least one method of payment by which payment for child care services arranged by the child’s caretaker can be made. A social services district must not establish administrative requirements for payment that impose unnecessary barriers on the caretaker’s choice of an eligible child care provider. [Additionally, a]

(i) A child care provider cannot be required to participate in a direct deposit program.

(ii) Child care providers cannot be required to enter into a contract with a social services district in order to provide child care services for a family receiving child care [subsidy.] assistance funded under the New York State Child Care Block Grant.

Subdivision (b) of section 415.5 of Title 18 NYCRR is amended to read as follows:

(b) [Reserved]Notwithstanding the provisions in 415.5(a)(1) of this Part, upon the implementation of a statewide system, a social services district must offer eligible providers, including legally exempt providers, the option to receive payment for subsidized child care services by direct deposit into the bank account of the child care provider.

(1) Such direct deposit shall only be at the express written consent of the provider on forms to be provided by the social services district.

(2) Such written consent can be revoked at any time by the provider in writing on forms provided by the social services district.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa Vasnani, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12210, (518) 474-8310, email: lisa.vasnani@ocfs.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

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 (OCFS) to establish rules, regulations, and policies to carry out OCFS’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-c of the SSL requires OCFS to promulgate regulations to require that local social services districts offer a direct deposit payment option for child care providers receiving child care subsidy payments by December 1, 2022.

2) Legislative Objectives:

This revision will allow OCFS to comply with Section 390-c of the SSL, as amended December 1, 2021, which requires OCFS to promulgate regulations that require local social services districts to offer a direct deposit payment option for child care providers receiving child care subsidy payments by December 1, 2022.

3) Needs and Benefits:

The purpose of this rule is to implement requirements of Section 390-c of the SSL, effective December 1, 2021, as set forth below in detail. This rule will enable OCFS to comply with Section 390-c of the SSL to promulgate regulations to require local social services districts to offer a direct deposit payment option for child care providers receiving child care assistance payments. This rule will benefit families and child care providers across New York State by facilitating efficient payment to providers, aiding in provider stability, thus expanding access to child care assistance and the reimbursement associated therewith.

4) Costs:

OCFS is working towards establishing a statewide direct deposit system with a third-party vendor. The costs incurred will facilitate provider stability and encourage family stability and economic growth. OCFS will bear the cost of said system. Costs include consulting, programming costs, ongoing system maintenance, updates as necessary and training. Local districts will not be required to pay any sum of money for these costs or to enroll or use the system.

5) Local Government Mandates:

Local social services districts will be required to process direct deposit requests and payments on an ongoing basis. It is anticipated that processing payments utilizing direct deposit will alleviate districts from having to process and mail paper payments.

6) Paperwork:

OCFS will develop and disseminate enrollment, change in institution, and revocation forms for districts to use and provide.

7) Duplication:

This rule does not duplicate state or federal requirements.

8) Alternatives:

There are no alternatives. Without this rule, OCFS will not be able to comply with Section 390-c of the SSL.

9) Federal Standards:

This rule is consistent with applicable federal requirements.

10) Compliance Schedule:

This rule will become effective December 1, 2022.

Regulatory Flexibility Analysis

1) Effect of Rule:

There are approximately 16,200 licensed/registered child care programs and 17,000 enrolled Legally Exempt child care programs in New York State and 58 local social services districts affected by this rule. Child care providers who elect to enroll in direct deposit will no longer need to deposit physical checks for their subsidy payments, allowing providers to be paid faster and in a more convenient way. Providers may continue to receive payment through one of the other payment methods offered by the child care assistance paying district. Districts will be required to process direct deposit requests and payments on an ongoing basis.

2) Compliance Requirements:

Local districts will be required to process direct deposit requests and payments on an ongoing basis.

3) Professional Services:

The Office of Children and Family Services (OCFS) is seeking to establish a statewide direct deposit system with a third-party vendor. The district may use the system to manage direct deposit payments.

4) Compliance Costs:

There will be additional costs due to the increased workload of district staff to process direct deposit requests and payments on an ongoing basis. OCFS expects an increase in this workload shortly after the implementation of a statewide direct deposit system due to anticipated demand. However, OCFS expects demand for direct deposit enrollment to stabilize