

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' powers and duties under the SSL.

Section 390(2-a) of the SSL requires OCFS establish regulations for licensed and registered child care programs that include minimum standards for health and infection control at such programs.

Section 410-x(3) of the SSL requires OCFS establish regulations for enrolled legally-exempt group child care programs that include minimum health and safety standards at such programs.

2) Legislative Objectives:

The legislative objective of SSL 390(2-a) and 410-x(3) authorizes OCFS to establish minimum standards to control communicable diseases at licensed, registered and enrolled legally-exempt group child care programs.

3) Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions. On January 30, 2020 the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

New York State first identified cases on March 1, 2020 and thereafter became the national epicenter of the outbreak. On March 7, 2020 with widespread transmission rapidly increasing within certain areas of the state, Governor Andrew M. Cuomo issued an Executive Order declaring a state disaster emergency to aid in addressing the threat COVID-19 poses to the health and welfare of New York State residents and visitors, which ended on June 24, 2021, due to the success in vaccination rates, and declining hospitalization and positivity statewide. With the emergence of the Delta variant accounting for 95% of recent sequenced positives in New York State.

These regulations require face coverings for all children, staff and visitors in child care programs to protect against the highly contagious Delta variant and increasing COVID-19 infections. The requirement will apply to large and small child care centers, home-based group family and family child care programs, after-school child care programs and legally exempt group programs. It will apply only to those who are medically able to tolerate wearing a mask.

4) Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Since 2020, OCFS has made funding available to child care programs to purchase personal protective equipment, including face coverings. Accordingly, this regulation will not have a significant cost impact on programs.

5) Local Government Mandates:

No new mandates are imposed on local governments by this rule.

6) Paperwork:

There is no new required paperwork.

7) Duplication:

This rule does not duplicate state or federal requirements.

8) Alternatives:

There are no alternatives. Without this rule, OCFS would not be meeting its statutory obligation to promulgate regulation that address the minimum health and safety standards for infection control.

9) Federal Standards:

This rule is consistent with applicable federal requirements.

10) Compliance Schedule:

Compliance with this rule will begin immediately.