

requires that the market rates be sufficient to ensure equal access to eligible children to comparable day care available to children whose parents are not eligible to receive a subsidy. The current market rates were initially issued in October, 2003 and reflect rate data collected in 2003. Accordingly, the current rates are artificially low. The adjustments to the market rates are needed to address the significantly escalating costs of providing child care services. Social services districts have experienced difficulty in recruiting and retaining providers to care for subsidized children because the actual costs of providing child care are greater than the current market rates.

Continuing to maintain the existing rates could result in subsidized families losing their child care arrangements or being unable to find appropriate child care. As a result, such families could be forced to place their children in child care settings that are inappropriate or unsafe for their children, leave their children unsupervised, or leave their jobs or training programs. If they choose the latter option, the families may remain on public assistance for longer periods of time or return to public assistance. This would directly counter the overriding purpose of welfare reform to encourage families on public assistance to move into employment or training programs. Thus, the increases in the market rates are necessary to maintain and preserve the gains achieved for poor families under welfare reform. As a result of these regulations, public assistance recipients and other low income families will not have to decide between losing their employment income and placing their children in child care that is unsafe or inappropriate.

Delaying the adoption of these regulations would be contrary to the public interest because it could result in children from public assistance or other low income families receiving unhealthy or unsafe child care, or in persons leaving jobs or training programs and returning to public assistance, to the detriment of the public welfare system. Therefore, it is necessary to adopt these regulations on an emergency basis.

**Subject:** Market rates for subsidized child care.

**Purpose:** To update the market rates social services districts can pay for subsidized child care.

**Text of emergency rule:** Section 415.9(f) is amended to read as follows:

Where child care services are provided by multiple providers, reimbursement will be made for the actual cost of such services up to the applicable rate for each child care provider used. *However, if the combined reimbursement to the multiple providers would exceed one weekly market rate, in order to receive such reimbursement the parent or caretaker must demonstrate that the schedule of employment of the parent or caretaker or the special needs of the child necessitates that child care services be arranged with multiple providers. If the social services district determines that the parent or caretaker has not demonstrated that there is a necessity to use multiple providers, reimbursement is limited to one weekly market rate that is applicable for the type of provider who provides care for the highest number of hours. The social services district will determine how to distribute the reimbursement for the multiple providers.*

Section 415.9(j) is amended to read as follows:

Effective October 1, [2003] 2005, following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week. The market rates are established in five groupings of social services districts. Except for districts noted as an exception in the market rate schedule, the rates established for a group apply to all districts in the designated group. The district groupings are as follows:

Group A: Nassau, Putnam, Rockland, Suffolk, Westchester

Group B: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren

Group C: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates

Group D: Albany, Dutchess, Orange, Ulster

Group E: Bronx, Kings, New York, Queens, Richmond

GROUP A COUNTIES:

Nassau, Putnam, Rockland, Suffolk, and Westchester

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$300	\$265	\$240	\$250
Exceptions:				
Nassau	--	--	\$248	\$261

Westchester	\$338	\$317	\$271	--
DAILY	\$70	\$60	\$55	\$54
Exceptions:				
Westchester	\$75	\$70	\$58	--
PART-DAY	\$47	\$40	\$36	\$36
Exceptions:				
Westchester	\$50	\$47	\$39	--
HOURLY	\$8.88	\$8.75	\$8.81	\$8.75

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$225	\$225	\$225
Exceptions:				
Westchester	--	\$246	--	--
DAILY	\$56	\$56	\$55	\$50
PART-DAY	\$37	\$37	\$37	\$33
HOURLY	\$8.00	\$8.00	\$7.50	\$7.50

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$250	\$243	\$240
Exceptions:				
Rockland	--	--	\$250	\$250
Westchester	--	--	--	\$250
DAILY	\$58	\$56	\$55	\$56
PART-DAY	\$39	\$37	\$37	\$37
HOURLY	\$8.00	\$8.00	\$8.00	\$8.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$250
Exceptions:				
Nassau	--	--	--	\$261
DAILY	\$0	\$0	\$0	\$54
PART-DAY	\$0	\$0	\$0	\$36
HOURLY	\$0	\$0	\$0	\$8.75

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$158	\$158	\$158
DAILY	\$40	\$40	\$39	\$35
PART-DAY	\$27	\$27	\$26	\$23
HOURLY	\$5.60	\$5.60	\$5.25	\$5.25

GROUP B COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$190	\$180	\$166	\$160
Exceptions:				
Monroe	--	\$185	\$173	--
DAILY	\$45	\$43	\$39	\$38
Exceptions				
Erie	--	--	\$44	--
Monroe	--	\$49	--	--
PART-DAY	\$30	\$28	\$26	\$25
Exceptions:				
Erie	--	--	\$29	--
Monroe	--	\$33	--	--
HOURLY	\$7.00	\$7.00	\$6.25	\$7.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$150	\$145	\$135	\$135
Exceptions:				
Erie	--	\$150	\$140	--
Saratoga	--	\$150	\$150	\$143
Schenectady	\$170	\$150	\$150	\$150
DAILY	\$34	\$33	\$31	\$31

Exceptions				
<i>Columbia</i>	\$35	--	--	--
<i>Erie</i>	\$38	\$38	\$34	\$34
<i>Saratoga</i>	\$35	\$35	--	\$33
<i>Warren</i>	--	--	--	\$33
PART-DAY	\$23	\$22	\$21	\$21
Exceptions:				
<i>Erie</i>	\$25	\$25	\$23	\$23
<i>Saratoga</i>	--	\$23	--	\$22
<i>Warren</i>	--	--	--	\$22
HOURLY	\$5.00	\$5.00	\$5.00	\$4.41

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$158	\$150	\$150	\$149
Exceptions:				
<i>Erie</i>	--	\$173	\$165	\$160
<i>Schenectady</i>	\$175	\$175	\$165	\$160
DAILY	\$38	\$35	\$34	\$33
Exceptions:				
<i>Erie</i>	--	--	--	\$34
PART-DAY	\$25	\$23	\$23	\$22
Exceptions:				
<i>Erie</i>	--	--	--	\$23
HOURLY	\$5.00	\$5.00	\$5.00	\$5.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$160
DAILY	\$0	\$0	\$0	\$38
PART-DAY	\$0	\$0	\$0	\$25
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$105	\$102	\$95	\$95
DAILY	\$24	\$23	\$22	\$22
PART-DAY	\$16	\$15	\$15	\$15
HOURLY	\$3.50	\$3.50	\$3.50	\$3.09

GROUP C COUNTIES:  
 Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$142	\$130
Exceptions:				
<i>Niagara</i>	--	--	--	\$138
DAILY	\$39	\$36	\$34	\$31
PART-DAY	\$26	\$24	\$23	\$21
HOURLY	\$5.00	\$5.00	\$5.00	\$5.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
Exceptions:				
<i>Clinton</i>	--	--	--	\$135
DAILY	\$31	\$31	\$30	\$30
Exceptions				
<i>Clinton</i>	--	--	--	\$34
<i>Sullivan</i>	--	--	--	\$31
PART-DAY	\$21	\$21	\$20	\$20
Exceptions:				
<i>Clinton</i>	--	--	--	\$23
<i>Sullivan</i>	--	--	--	\$21
HOURLY	\$3.18	\$3.00	\$3.00	\$3.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
DAILY	\$34	\$33	\$31	\$30
PART-DAY	\$23	\$22	\$21	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$4.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$130
Exceptions:				
<i>Niagara</i>	--	--	--	\$138
PART-DAY	\$0	\$0	\$0	\$21
HOURLY	\$0	\$0	\$0	\$5.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$95	\$91	\$88	\$88
DAILY	\$22	\$22	\$21	\$21
PART-DAY	\$15	\$15	\$14	\$14
HOURLY	\$2.23	\$2.10	\$2.10	\$2.10

GROUP D COUNTIES:  
 Albany, Dutchess, Orange, and Ulster

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$205	\$190	\$175	\$176
Exceptions:				
<i>Dutchess</i>	\$227	\$215	\$197	--
DAILY	\$49	\$46	\$44	\$44
Exceptions:				
<i>Albany</i>	--	\$50	\$45	--
PART-DAY	\$33	\$30	\$29	\$29
Exceptions				
<i>Albany</i>	--	\$33	\$30	--
HOURLY	\$7.00	\$6.75	\$6.50	\$7.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$175	\$167	\$175
Exceptions:				
<i>Dutchess</i>	\$180	\$180	\$175	\$180
<i>Orange</i>	\$196	\$181	\$175	--
DAILY	\$44	\$41	\$38	\$38
Exceptions				
<i>Dutchess</i>	--	\$45	\$44	\$45
<i>Orange</i>	--	--	--	\$44
PART-DAY	\$29	\$27	\$25	\$25
Exceptions:				
<i>Dutchess</i>	--	\$30	\$29	\$30
<i>Orange</i>	--	--	--	\$29
HOURLY	\$6.00	\$6.00	\$6.00	\$6.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$185	\$180	\$175	\$175
Exceptions:				
<i>Orange</i>	\$200	\$194	--	--
DAILY	\$44	\$44	\$41	\$40
PART-DAY	\$29	\$29	\$27	\$27
HOURLY	\$6.00	\$6.00	\$6.00	\$6.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$176
DAILY	\$0	\$0	\$0	\$44

PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$123	\$123	\$117	\$123
DAILY	\$31	\$29	\$27	\$27
PART-DAY	\$21	\$19	\$18	\$18
HOURLY	\$4.20	\$4.20	\$4.20	\$4.20

GROUP E COUNTIES:

Bronx, Kings, New York, Queens, and Richmond DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$288	\$255	\$180	\$177
DAILY	\$67	\$67	\$50	\$50
PART-DAY	\$45	\$43	\$33	\$33
HOURLY	\$13.75	\$17.00	\$13.00	\$11.65

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$150	\$135	\$125	\$125
DAILY	\$34	\$35	\$35	\$31
PART-DAY	\$23	\$23	\$23	\$21
HOURLY	\$15.00	\$10.00	\$11.00	\$11.60

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$150	\$140
DAILY	\$38	\$38	\$36	\$35
PART-DAY	\$25	\$25	\$24	\$23
HOURLY	\$15.00	\$13.00	\$11.00	\$16.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$177
DAILY	\$0	\$0	\$0	\$50
PART-DAY	\$0	\$0	\$0	\$33
HOURLY	\$0	\$0	\$0	\$11.65

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE				
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AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$105	\$95	\$88	\$88
DAILY	\$24	\$25	\$25	\$22
PART-DAY	\$16	\$17	\$17	\$15
HOURLY	\$10.50	\$7.00	\$7.70	\$8.12

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$300
DAILY	\$ 75
PART-DAY	\$ 50
HOURLY	\$ 17

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 15, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

**Regulatory Impact Statement**

1. Statutory authority:

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

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant. The amount to be paid or allowed for child care assistance funded under the Block Grant and under Title XX shall be the actual cost of care but no more than the applicable rate established in regulations. Payment rates must be sufficient to ensure equal access for eligible children to comparable child care assistance in the substate area that are provided to children whose parents are not eligible to receive assistance under any federal or State programs. Payment rates must take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional cost of providing child care for children with special needs.

Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access for eligible children. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The current State Plan covers the period October 1, 2003 through September 30, 2005 and the proposed State Plan for the period October 1, 2005 through September 30, 2007 has been submitted for approval by the federal government. The market rates that are being replaced were issued in October 2003 and were based on a survey conducted in 2003.

2. Legislative objectives:

The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

3. Needs and benefits:

The regulations are needed to adjust existing rates that were established based on a survey done in 2003. Since then, child care providers have experienced increased costs in operating their businesses. These costs are reflected in the higher rates that they are charging as compared to the existing rates. The rates need to be updated to reflect the increased rates in order to continue to provide subsidized families with equal access to child care comparable to that received by unsubsidized families as required by federal and State laws.

The methodology used by the Office to establish the payment rates for the regulations meets the federal and State statutory requirements for conducting a local survey of child care providers. Prior to conducting the market rate survey, a letter was mailed to all licensed and registered providers to inform them that they might be among the sample of providers who would be asked to participate in the market rate survey. The Office contracted with a market research firm to conduct the telephone survey in English and Spanish and had resources available to assist providers in other languages. The sample was drawn so that it encompassed the full range of providers within all geographic areas.

The payment rates were established based on approximately 4,800 completed telephone market rate surveys from licensed and registered providers throughout the State. Providers were asked for the rates they charge for full-time and part-time care, if applicable, based on the age of the child.

These rates were analyzed to determine the 75th percentile. The federal Administration of Children and Families has indicated in the preamble to the final rule for the Child Care and Development Fund that it regards the 75th percentile of the actual cost of care as sufficient to provide subsidized parents with equal access to child care providers. The rates that resulted were then clustered into five distinct groupings of social services districts based on rate similarities. Within each group, rates are differentiated by type of provider (*i.e.*, day care center, school-age child care, family day care, group family day care and legally-exempt family child care and in-