§ 398-a. Standards of payment for foster care. (1) For purposes of this section, notwithstanding any other provisions of law, the term foster child shall mean a person who is cared for away from his or her home under conditions prescribed by regulations of the department and who is: (a) under the age of eighteen years, (b) under the age of twenty-one years if a student attending a school, college or university or regularly attending a course of vocational or technical training designed to fit him or her for gainful employment or (c) between the ages of eighteen and twenty-one who lacks the skills or ability to live independently and consents to continue in care.

* (2) The office of children and family services shall promulgate, subject to consultation with appropriate state agencies, the approval of the director of the budget and certification to the chairmen of the senate finance and assembly ways and means committees, regulations establishing standards of payment for care provided foster children when the care of such children is subject to public financial support, when such care is provided by relatives, authorized agencies, family boarding homes, or state agencies. Such standards of payment shall include the care required to be provided for foster children and the cost of such care. When the office of children and family services has established such standards, reimbursement under subdivision two of section one hundred fifty-three-k of this chapter, for the care of foster children shall be limited in accordance with such standards.

* NB Effective until June 30, 2027

* (2) The department shall promulgate, subject to consultation with appropriate state agencies, the approval of the director of the budget and certification to the chairmen of the senate finance and assembly ways and means committees, regulations establishing standards of payment for care provided foster children when the care of such children is subject to public financial support, when such care is provided by relatives, authorized agencies, family boarding homes, or state agencies. Such standards of payment shall include the care required to be provided for the foster child and the cost of such care. When the department has established such standards, reimbursement under section one hundred fifty-three of this chapter, for the care of foster children shall be limited in accordance with such standards.

* NB Effective June 30, 2027

(2-a) Those social services districts that as of January first, two thousand five were paying at least one hundred percent of the applicable rates published by the office of children and family services for the two thousand four--two thousand five rate year for care provided to foster children in institutions, group residences, group homes and agency boarding homes and/or the applicable administrative/services rates published by the office for the operations of authorized agencies for care provided to foster children in therapeutic, special needs and emergency foster boarding homes must pay for the two thousand five--two thousand six rate year and for each subsequent rate year thereafter at least one hundred percent of the applicable rates published by the office for that rate year. Those social services districts that as of January first, two thousand five were paying less than the applicable rates published by the office for the two thousand four--two thousand five rate year for care provided to foster children in institutions, group residences, group homes and agency boarding homes and/or the applicable administrative/services rates published by the office for the operations of authorized agencies for care provided to foster children in therapeutic, special needs and emergency foster boarding homes must increase their rates of payment so that: effective July first, two thousand five, the difference between the percentage of the applicable rates published by the office for the two thousand five--two thousand six rate year and the rates such districts are paying is at least two-thirds less than the difference between the percentage of the applicable rates published by the office for the two thousand four--two thousand five rate year and the rates that such districts were paying for such programs on January first, two thousand five; and effective July first, two thousand six for the two thousand six--two thousand seven rate year and for each subsequent year thereafter all social services districts shall pay at least one hundred percent of the applicable rates published by the office for the applicable rate year.

(2-b) Payments made directly by social services districts to foster boarding homes for foster care pursuant to this section may be made by direct deposit or debit card, as elected by the recipient, and administered electronically, and in accordance with such guidelines as may be set forth by regulation of the office of children and family services. The office of children and family services may enter into

contracts on behalf of social services districts for such direct deposit or debit card services in accordance with section twenty-one-a of this chapter.

(2-c) Those social services districts that as of July first, two thousand twenty-two were paying at least one hundred percent of the applicable rates published by the office of children and family services for the two thousand twenty-two--two thousand twenty-three rate year for care provided to foster children in regular, therapeutic, special needs, and emergency foster boarding homes shall pay for the two thousand twenty-two--two thousand twenty-three rate year and for each subsequent rate year thereafter at least one hundred percent of the applicable rates published by the office of children and family services for that rate year. Those social services districts that as of July first, two thousand twenty-two were paying less than the applicable rates published by the office of children and family services for the two thousand twenty-two--two thousand twenty-three rate year for care provided to foster children in regular, therapeutic, special needs and emergency foster boarding homes shall increase their rates of payment so that: effective July first, two thousand twenty-two the difference between the percentage of the applicable rates published by the office of children and family services for the two thousand twenty-two--two thousand twenty-three rate year and the rates such districts are paying is at least one-half less than the difference between the percentage of the applicable rates published by the office of children and family services for the two thousand twenty-two--two thousand twenty-three rate year and the rates that such districts were paying for such programs on July first, two thousand twenty-two; and effective July first, two thousand twenty-three for the two thousand twenty-three--two thousand twenty-four rate year and for each subsequent year thereafter all social services districts shall pay at least one hundred percent of the applicable rates published by the office of children and family services for the applicable rate year.

(3) If the commissioner finds that a social services district or a city containing a social services district has adopted regulations establishing standards of payment for care provided foster children by relatives, authorized agencies or family boarding homes, when the care of such children is subject to public financial support, which standards

are substantially equivalent to those promulgated by the department, such department standards shall not be applicable in such district or city.

(4) If and so long as federal aid is available therefor and subject to the approval of the director of the budget, the department is authorized to conduct a three year demonstration project to test the effectiveness of establishing capitated rates for foster care. The demonstration project shall be entitled the homerebuilders demonstration project. The goal of the project shall be to demonstrate how innovative methods to fund foster care programs may result in the discharge of children from foster care to suitable, permanent homes in a more timely manner, at no additional costs to state and local governments, through service continuity, intensified discharge planning, pre-adoption services, after-care services and/or post-adoption services. Notwithstanding any inconsistent provision of law, in order to implement a demonstration project relating to the effectiveness of establishing capitated rates for foster care, the department may waive provisions set forth in: (a) section one hundred fifty-three and this section, with regard to limitations on capitated reimbursement to a social services district for after-care or post-adoption services to children and families participating in the homerebuilders demonstration project, where the child is no longer in the care and custody or custody and guardianship of the local commissioner of social services; and (b) subparagraph (ii) of paragraph (e) of subdivision five of section four hundred nine-a of this title, with regard to limitations on reimbursement for intensive home based family preservation services to children participating in the homerebuilders demonstration project who are in the care and custody or custody and guardianship of a local commissioner of social services; and (c) the regulations promulgated implementing such provisions of law. The authority of the department to waive such provisions shall be limited to the purpose of implementing such demonstration project and shall expire with the completion of the demonstration project, unless otherwise authorized by law. The department shall report to the governor and the legislature on the status of the homerebuilders demonstration project at least annually after its commencement and shall submit a final report thereon to the governor and the legislature no later than July first, nineteen hundred ninety-seven. Such final report shall set forth the

findings of the homerebuilders demonstration project and any recommendations for statutory or regulatory changes.

(5) (a) The office of children and family services shall establish, subject to consultation with appropriate state agencies, the approval of the director of the budget and federal approval, standards of payment for the capital costs of approved projects for residential institutions for children which enter into a lease, sublease or other agreement with the dormitory authority pursuant to subdivision forty of section sixteen hundred eighty of the public authorities law. The maintenance rate established by the commissioner of the office of children and family services for such residential institutions for children shall be established in two parts, one part of which will be the capital financing add on rate, which shall be the cost per child of the annual payment pursuant to such lease, sublease or other agreement. The applicable social services district or school district responsible for the maintenance cost of a child placed in such residential institution for children, must agree to pay and is responsible for paying the residential institution for children one hundred percent of the capital financing add-on rate for each such child placed in such institution. To the extent permissible under federal law and regulation, the capital financing add-on rate shall not be subject to any cost screens, caps or parameters limiting or reducing the amount of such cost required by this subdivision.

(b) The expenditures made by a social services district or school district for the capital financing add on rate for children placed by a committee on special education of a school district in a residential institution for children which has a lease, sublease or other agreement with the dormitory authority pursuant to subdivision forty of section sixteen hundred eighty of the public authorities law, shall be subject to state reimbursement in accordance with subdivision ten of section one hundred fifty-three of this chapter or article eighty-nine of the education law, as applicable.

(c) The expenditures of a social services district for the capital financing add-on rate for foster children placed in a residential institution for children which has a lease, sublease or other agreement with the dormitory authority pursuant to subdivision forty of section sixteen hundred eighty of the public authorities law shall be subject to

fifty percent state reimbursement from the office of children and family services, net of any available federal funds, for the portion of the costs that exceed the district's foster care block grant allocation.

* (6) (a) Any federal paycheck protection program loan forgiveness funding or other extraordinary federal funding, as determined by the office of children and family services, received by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article, to the extent consistent with federal law, shall be disregarded when calculating the maximum state aid rate when such funding is utilized for allowable costs or expenses incurred due to the state of emergency that was declared in executive order two hundred two on March seventh, two thousand twenty. Allowable costs or expenses shall include costs incurred due to the pandemic, as allowable pursuant to the program through which such funding was received or, to the extent permitted by federal law, expenses related to offsetting lost revenue due to a reduction in placements that can be directly attributed to the novel coronavirus (COVID-19) pandemic.

(b) The office of children and family services shall hold harmless the prospective maximum state aid rate to the extent that extraordinary federal revenue was disregarded in accordance with paragraph (a) of this subdivision for the two thousand twenty-one--two thousand twenty-two rate year and subsequent applicable rate years.

* NB Repealed April 16, 2026