

CHAPTER 55 OF THE CONSOLIDATED LAWS

SOCIAL SERVICES LAW

AN ACT relating to social services, constituting chapter fifty-five of the consolidated laws.

Became a law April 18, 1940, with approval of the Governor. Passed, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Article 1. Short title; definitions (§§ 1-2).

2. Department and state board of social welfare (§§ 5-40).

2-A. Shelter and supported housing programs (§§ 41-52).

Title 1. Homeless housing and assistance program (§§ 41-44).

2. Single room occupancy support services program (§§ 45--45-g).

4. Homelessness intervention program (§§ 48-52).

3. Local public welfare organization; powers and duties (§§ 56-116).

Title 1. Application (§§ 56-58).

2. Public welfare districts and their responsibility for public assistance and care (§§ 61-64).

3. County public welfare districts (§§ 65-73).

3-A. Intergration of local public welfare administration (§§ 74--74-i).

4. City public welfare districts (§§ 77-79).

5. Records, reports, funds and appropriations (§§ 80-97).

6. Powers to enforce support (§§ 101-111).

6-A. Establishment of paternity and enforcement of support (§§ 111-a--111-v).

6-B. Services for enforcement of support provided by the department of social services (§§ 111-y--111-z).

7. Local personnel training; research and demonstration projects; special state reimbursement (§§ 112-115).

7-B. Chief executive officers of local welfare departments: appointment (§ 116).

- 4. Residence and removal (§§ 117-122).
- 5. Assistance and care (§§ 131--370-aa).
- Title 1. General provisions (§§ 131--152-d).
 - 2. State reimbursement for public assistance and care (§§ 153-154).
 - 3. Home relief (§§ 157-165).
 - 4. Veteran assistance (§§ 168-178).
 - 5. Public institutional care for adults (§§ 193-202).
 - 6. Additional state payments for eligible aged, blind and disabled persons (§§ 207-212).
 - 7. Services for the aged, blind and disabled (§§ 250-259).
 - 8. Emergency assistance for aged, blind and disabled persons (§§ 300-309).
 - 9-A. Equipment loan fund for the disabled (§§ 326-a--326-b).
 - 9-B. Public assistance employment programs (§§ 330--342-a).
 - 10. Aid to dependent children (§§ 343-360).
 - 11. Medical assistance for needy persons (§§ 363-369).
 - 11-B. Health insurance continuation program for persons with AIDS. (§§ 369-k--369-n)
 - 11-C. Medicaid drug utilization review. (§§ 369-aa--369-cc).
 - 11-D. Basic health program. (§ 369-gg).
 - 12. Community centers and services for senior citizens. (§§ 370--370-b).
 - 12-A. Supports and services for youth suffering from adverse childhood experiences. (§ 370-c).
 - 13. State Heating Fuel Crisis Assistance. (§ 370-aa).
- 6. Children (§§ 371-458-l).
 - Title 1. Care and protection of children (§§ 371-393).
 - 1-A. Child care creation and expansion tax credit program (§§ 394--394-g).
 - 2. Powers and duties of public welfare officials (§§ 395-404).
 - 3. Child welfare services (§§ 406-408).

4. Preventive services for children and their families (§§ 409--409-a).
- 4-A. Child welfare services planning and administration (§§ 409-d--409-g)
- 4-B. Services; pregnant adolescents (§§ 409-i--409-n).
5. Day care for certain children (§§ 410--410-ccc).
- 5-A. Youth facilities improvement act (§§ 410-d--410-o).
- 5-B. Child care resource and referral program. (§§ 410-p--410-t).
- 5-C. Block grant for child care. (§§ 410-u--410-z).
6. Child protective services (§§ 411-428).
- 6-A. Home visiting (§ 429).
7. Day services for children and families (§§ 430-434).
8. State child care review service (§§ 440-446).
- 8-A. Safe harbour for exploited children act (§§ 447-a--447-b).
9. Subsidies for the adoption of children (§§ 450-458).
10. Kinship guardianship assistance program (§§ 458-a--458-f).
11. Education reform program (§ 458-l).
12. Family support services programs (§§ 458-m--458-n).
- 12-A. Differential response programs for children under twelve (§ 458-o).
- 6-A. Domestic violence prevention act (§§ 459-a--459-h).
7. Residential care programs for adults and children (§§ 460--463-b).
- Title 1. General provisions (§§ 460--460-h).
2. Residential programs for adults (§§ 461--461-u).
3. Residential programs for children (§§ 462--462-b).
4. Registry of community residential facilities (§§ 463--463-b).
8. New York state rural human services networking program (§§ 464--464-f)

- 8-A. Nutrition outreach and public education program (§§ 465--465-d).
- 8-B. Transitional care (§§ 466-a--466-b).
- 9-A. Berkshire Industrial Farm (§§ 472-e--472-q).
- Title 2. Berkshire Industrial Farm (§§ 472-e-472-q).
- 9-B. Adult protective services (§§ 473--473-e).
- Title 1. Protective services (§ 473).
 - 2. Short-term involuntary protective services orders (§§ 473-a--473-c).
 - 3. Community guardianship (§§ 473-d--473-e).
- 10. General provisions applicable to charitable institutions (§§ 474-480).
- 10-A. William B. Hoyt memorial children and family trust fund act (§§ 481-a--481-f).
- 10-B. Statewide settlement house program (§§ 482-a--482-c).
- 10-C. State council on children and families (§§ 483--483-h).
- 10-D. Services for victims of human trafficking (§§ 483-aa--483-ff).
- 11. Construction; laws repealed; when to take effect (§§ 484-486).

ARTICLE 1

SHORT TITLE; DEFINITIONS

- Section 1. Short title.
- 2. Definitions.

§ 1. Short title. This chapter shall be known as the social services law.

§ 2. Definitions. When used in this chapter unless otherwise expressly stated or unless the context or subject matter requires a different interpretation.

- 1. Department means the state department of social services, provided

however that for purposes of titles eleven, eleven-A and eleven-B of article five of this chapter, department means the state department of health, except that in subdivisions two and three of section three hundred sixty-four-i, clause (d) of subparagraph three of paragraph (b) of subdivision two of section three hundred sixty-six, paragraph (b) of subdivision four of section three hundred sixty-six, subdivisions one through five of section three hundred sixty-six-a, subdivision seven of section three hundred sixty-six-a, and section three hundred sixty-eight-c of this chapter and where the context thereof clearly requires otherwise, department means the state department of social services.

2. Board means the state board of social welfare as continued by the executive law.

6. Commissioner means the state commissioner of social services, provided however that for purposes of titles eleven, eleven-A and eleven-B of article five of this chapter, commissioner means the state commissioner of health, except that in clause (c) of subparagraph three of paragraph (b) of subdivision two of section three hundred sixty-six of this chapter and where the context thereof clearly requires otherwise, commissioner means the state commissioner of social services.

7. Social services district means a city or county social services district as constituted by section sixty-one.

8. County commissioner of social services shall mean the county officer, board or commission, by whatever title known, having authority to give the public assistance and care for the administration of which a county social services district is responsible.

9. City commissioner of social services shall mean the city officer, board or commission, by whatever title known, having authority to give the public assistance and care for the administration of which a city social services district is responsible.

10. Commissioner of social services shall mean a city or county

commissioner of social services.

14. Social services official shall mean a county commissioner of social services, a city commissioner of social services, a town social services officer or city social services officer to whom the power or duty referred to is assigned under the provisions of this chapter. In any law where reference is made by any title to an official charged with the duty of caring for the poor in a town, city or county, it shall be understood as referring to the one of the above mentioned social services officials on whom the power or duty referred to is conferred under the provisions of this chapter.

15. Public home means an adult care facility or a residential health care facility operated by a social services district. In any law where reference is made by any name to an almshouse maintained at public expense, it shall be construed as referring to a public home.

16. Legislative body means the board or boards empowered to make appropriations for public assistance and care in a county, town or city.

17. Social services department means the division or officer of city government or the office or official or board charged with the authority to administer public assistance or care in the county social services district.

18. Public assistance and care includes family assistance, safety net assistance, veteran assistance, medical assistance for needy persons, institutional care for adults and child care granted at public expense pursuant to this chapter.

19. Public assistance refers to family assistance, safety net assistance and veteran assistance.

* 21. Adult care facility shall mean a family type home for adults, a shelter for adults, a residence for adults, an enriched housing program or an adult home, which provides temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed pursuant to article

twenty-eight of the public health law or articles nineteen, twenty-three, thirty-one and thirty-two of the mental hygiene law, are by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently. In addition, a residence for adults, enriched housing program or an adult home may provide services to non-residents in accordance with the provisions of section four hundred sixty-one-k of this chapter.

* NB Effective until July 1, 2029

* 21. Adult care facility shall mean a family type home for adults, a shelter for adults, a residence for adults, an enriched housing program or an adult home, which provides temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed pursuant to article twenty-eight of the public health law or articles nineteen, twenty-three and thirty-one of the mental hygiene law, are by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

* NB Effective July 1, 2029

22. A family type home for adults shall mean an adult care facility established and operated for the purpose of providing long-term residential care and personal care and/or supervision to four or fewer adult persons unrelated to the operator.

23. A shelter for adults shall mean an adult care facility established and operated for the purpose of providing temporary residential care, room, board, supervision, information and referral, and where required by the department or otherwise deemed necessary by the operator, social rehabilitation services, for adults in need of temporary accommodations, supervision and services. Such definition shall not include facilities providing such temporary residential services to fewer than twenty persons, unless such facility is operated by a social services district.

24. A residence for adults shall mean an adult care facility established and operated for the purposes of providing long-term residential care, room, board, housekeeping and supervision to five or

more adults, unrelated to the operator. The provisions of this subdivision shall not apply to any housing projects established pursuant to the private housing finance law, the public housing law, the membership corporations law or the not-for-profit corporation law except for those distinct programs operated by such projects which provide supervision and/or personal care and which are approved or certified by the department.

25. An adult home shall mean an adult care facility established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, (either directly or indirectly), and supervision to five or more adults unrelated to the operator. The provisions of this subdivision shall not apply to any housing projects established pursuant to the private housing finance law, the public housing law, the membership corporations law or the not-for-profit corporation law except for those distinct programs operated by such projects which provide supervision and/or personal care and which are approved or certified by the department.

26. A private proprietary residence for adults shall mean a residence for adults, as defined by subdivision twenty-four of this section, which is operated for compensation and profit.

27. A private proprietary adult home shall mean an adult home, as defined by subdivision twenty-five of this section, which is operated for compensation and profit.

28. An enriched housing program shall mean an adult care facility established and operated for the purpose of providing long-term residential care to five or more adults, primarily persons sixty-five years of age or older, in community-integrated settings resembling independent housing units. Such program shall provide or arrange the provision of room, and provide board, housekeeping, personal care and supervision.

29. For purposes of title two, and, where applicable, title one of article seven of this chapter, an operator shall include any natural

person or entity which provides or purports to provide residential care and services in an adult care facility.

30. An intermediate care facility shall mean a facility or part thereof approved by the state department of health to provide therein health-related care and services to persons who because of their physical or mental condition, or both, require institutional care and services, in addition to board and lodging, but who do not have such an illness, disease, injury, or other condition as to require the institutional care and services provided only by a hospital or nursing home, providing such facility meets standards of safety and sanitation in accordance with state and federal requirements in addition to those applicable to nursing homes under state law.

31. The term "infant" or "minor" shall mean a person who has not attained the age of eighteen years except with respect to article six of this chapter.

32. "Residential treatment facility for children and youth" shall have the meaning defined in section 1.03 of the mental hygiene law.

33. "Residential care center for adults" shall have the meaning defined in section 1.03 of the mental hygiene law.

35. Indian tribe shall mean those tribes designated as Indian tribes by the bureau of Indian affairs of the federal department of the interior or by the state of New York.

36. Indian child shall mean any unmarried person who:

- (a) is under the age of eighteen; or
- (b) is under the age of twenty-one, entered foster care prior to his/her eighteenth birthday and remains in care, and who:
 - (i) is a member of an Indian tribe, or
 - (ii) is eligible for membership in an Indian tribe, or
 - (iii) is the biological child of a member of an Indian tribe and is residing on or is domiciled within an Indian reservation.

* 37. "Comprehensive psychiatric emergency program" shall have the

meaning defined in section 1.03 of the mental hygiene law.

* NB Repealed July 1, 2027

38. When used in this chapter, the following terms shall have the following meanings, unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "Medicaid" or "medical assistance" means title eleven of article five of this chapter and the program thereunder.

(b) "Family health plus" means title eleven-D of article five of this chapter and the program thereunder.

(c) "Child health plus" means title one-A of article twenty-five of the public health law and the program thereunder.

(d) "Medicaid managed care" means Medicaid provided under section three hundred sixty-four-j of this chapter.

(e) "Medicaid fee-for-service" means Medicaid provided other than under Medicaid managed care.

39. "Mental illness" shall have the same meaning as defined in section 1.03 of the mental hygiene law.

40. "Developmental disability" shall have the same meaning as defined in section 1.03 of the mental hygiene law.

ARTICLE 2

DEPARTMENT AND STATE BOARD OF SOCIAL WELFARE

Section 5. Department of social welfare.

11. Commissioner of social services.

12. Deputy commissioners.

13. Organization of the department.

14. Employees; compensation.

16. Offices of the Department.

17. Powers and duties of the commissioner.

20. Powers and duties of the department.

20-a. Local personnel; limitations on department's power.

20-b. Plan for in-home care of senior citizens.

20-c. Privatization.

- 20-d. Training of direct care workers in adverse childhood experiences.
- 21. Welfare management system.
- 21-a. Electronic benefit transfer system.
- 22. Appeals and fair hearings; judicial review.
- 23. Wage reporting system.
- 28. Gifts and bequests.
- 29. Federal agency.
- 30. Continuation of salaries of local and state welfare employees receiving training for the better performance of their duties.
- 31. Fellowships and scholarships for local and state public welfare employees.
- 32. Reciprocal agreements.
- 33. Contracts for supplies and commodities needed in the administration of assistance.
- 34. General powers and duties of the commissioner.
- 34-a. Services planning requirements.
- 35. Legal representation of individuals whose federal disability benefits have been denied or may be discontinued.
- 36. Studies.
- 36-a. Department research and demonstration projects.
- 36-b. Local flexibility incentive pilot program.
- 36-c. Savings plan for the city of New York.
- 37. Reports of and to department.
- 38. Commission for the blind.
- 39. Indian affairs.
- 40. Real property; purchase or acquisition.

§ 5. Department of social welfare. The state department of social welfare, provided for in the constitution, is hereby continued.

§ 11. Commissioner of social services. The chief executive and administrative officer of the department shall be the commissioner of

social services, who shall be appointed by the governor with the advice and consent of the senate.

§ 12. Deputy commissioners. The Commissioner shall appoint and remove at pleasure a first deputy commissioner, and such other deputy commissioners as he shall deem necessary for the proper organization and general classification of the work of the department, each of whom shall be in the exempt class of the civil service.

§ 13. Organization of the department. The commissioner shall determine the structure of departmental organization.

§ 14. Employees; compensation. In addition to his deputies, the commissioner may appoint and remove from time to time, in accordance with law and any applicable rules of the state civil service commission, such employees as he may deem necessary for the efficient administration of the department. The compensation of employees appointed by the commissioner pursuant to this section shall be determined by him in accordance with law.

§ 16. Offices of the Department. The department shall be provided with suitably furnished rooms for its offices. The principal office of the department shall be in the county of Albany.

§ 17. Powers and duties of the commissioner. The commissioner shall

- (a) determine the policies and principles upon which public assistance, services and care shall be provided within the state both by the state itself and by the local governmental units within the limits hereinafter prescribed in this chapter;
- (b) make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers;

(c) in consultation with the civil service commission, establish minimum qualifications for positions in local social services departments and classify such positions according to differing capabilities, skills, responsibilities and education suitable to the various phases of welfare administration, not inconsistent with the standards and guidelines of a duly authorized federal agency, having due regard for recruitment of personnel and the requirements and varying types of communities within the state. Notwithstanding any inconsistent provision of law, rule or regulation, when (i) a position is vacant and not filled for a continuous period of three months, and (ii) provided that no person meeting all the prescribed minimum qualifications is available therefore, the local social services commissioner may, if in accordance with federal standards, waive those qualifications which he deems least essential for such position and make a provisional appointment of a person otherwise qualified therefor;

(d) submit an annual report to the governor and the legislature prior to the fifteenth day of December of each year. Such annual report shall include the following: the affairs of the department and the status of welfare programs in the state with recommendations for the improvement and development of welfare programs; a report on the department's fair hearing system, as required by section twenty-two of this article; a written evaluation report on the delivery of child welfare services in the state, as required by subdivision five of section four hundred seven of this chapter; a report of the operations of the state central register of child abuse and maltreatment and the various local child protective services, as required by section four hundred twenty-six of this chapter; a report on the number and status and the findings of investigations of deaths of children pursuant to subdivision five of section twenty of this chapter; a report on the progress of the development and operation of the child care review system, as required by subdivision nine of section four hundred forty-two of this chapter; commencing before December fifteenth, nineteen hundred eighty-four and terminating on December fifteenth, nineteen hundred eighty-nine, a progress report on the planning and implementation of the teenage services act as required by the provisions of section four hundred nine-m of title four-B of this chapter; an analysis of the information contained in the registry of community facilities, as required by

paragraph (b) of subdivision two of section four hundred sixty-three-a of this chapter; and a report on the operation of the child support enforcement program, as required by chapter six hundred eighty-five of the laws of nineteen hundred seventy-five;

* (d-1) in consultation with the commissioner of the division of criminal justice, submit a report to the governor, the speaker of the assembly, the temporary president of the senate and the chairs of the assembly and senate standing committee on social services, on the services provided to human trafficking survivors for the purpose of assessing the availability, utilization and necessity for such services. The initial report shall be provided one year after the effective date of this subdivision and annually thereafter and shall include, but not be limited to, the following:

(i) the number of human trafficking referrals made to the office of temporary and disability assistance including the number of confirmed cases;

(ii) the number of human trafficking survivors that received housing and/or services, with specific information about the type of housing or service;

(iii) the number of human trafficking survivors that did not receive housing and/or services, and an indication as to what type of housing and/or service was requested and whether such housing and/or services were denied due to a lack of availability or because the case was not confirmed; and

(iv) information pertaining to the types of services provided by providers such as: (1) the number of current contracts to provide housing and services for human trafficking survivors and their annual funding levels, broken down by contract; (2) the number of contracts and/or services that have ended, been terminated or not renewed and the reason why; (3) the types of housing and/or services that are provided, as well as the availability of such services, including the geographic location of such housing or service; and (4) any other information the office of temporary and disability assistance deems appropriate.

* NB There are 2 sb (d-1)'s

* (d-1)(1) in consultation with each local health department and each social services district in the county in which a publicly funded shelter is located, the commissioner of the department of health, the

commissioner of the office of children and family services, the commissioner of the New York city department of homeless services, and the commissioner of the New York city department of health and mental hygiene, conduct a review of information, to the extent such information is known and available after making all diligent efforts, regarding the homeless population in publicly funded shelters, during a state disaster emergency, declared pursuant to executive order two hundred two of two thousand twenty or any extension or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic, including but not limited to, the following information:

(i) the number of confirmed infected individuals;

(ii) the number of hospitalizations;

(iii) the number of deaths;

(iv) information regarding the individual, if known: (a) age; (b) race; (c) family composition; (d) shelter status; (e) type of shelter including: family shelter, a shelter for adults, a hotel, an emergency apartment, a domestic violence shelter, a runaway and homeless youth shelter, or a safe house for refugees; (f) any known risk factors; and (g) any other information the office deems appropriate;

(v) with regard to individuals residing in a residential program for victims of domestic violence or for runaway and homeless youth, information regarding the average number of individuals reported with a confirmed infection, the number and percentage of programs struggling with an outbreak, and the number and percentage of residents impacted in those programs compared to the program's maximum capacity.

(2) in consultation with the commissioner of health, utilizing the information reviewed pursuant to paragraph (1) of this subdivision and to the extent that confidentiality requirements set forth in law and regulation are maintained publish a report containing such information aggregated by county. When confidentiality requirements set forth in law and regulation prevent the publication of information aggregated by county, the report shall contain such information aggregated for multiple counties and organized by geographic region. Notwithstanding any other provision of this paragraph, for residential programs for victims of domestic violence and runaway and homeless youth, reported information shall be aggregated on a statewide basis.

(3) post the report on the office of temporary and disability

assistance's website within sixty days of the effective date of this paragraph and update the report at least every three months thereafter during the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty or any extension or subsequent executive order issued in response to the novel coronavirus (COVID-19) pandemic.

* NB There are 2 sb (d-1)'s

(e) work cooperatively with the commissioner of the office of mental health and the commissioner of the office for people with developmental disabilities to assist the commissioner of education in furnishing integrated employment services to individuals with severe disabilities, including the development of an integrated employment implementation plan pursuant to article twenty-one of the education law;

(f) in conjunction with the commissioner of education, develop and annually review a plan to ensure coordination and access to education for homeless children, in accordance with the provisions of section thirty-two hundred nine of the education law, and monitor compliance of local social services districts with such plan;

(g) require participation of all employees of a child protective service in a training course which has been developed by the office for the prevention of domestic violence in conjunction with the office of children and family services whose purpose is to develop an understanding of the dynamics of domestic violence and its connection to child abuse and neglect. Such course shall:

(i) pay special attention to the need to screen for domestic violence;

(ii) place emphasis on the psychological harm experienced by children whose environment is impacted by familial violence and accordingly explore avenues to keep such children with the non-abusive parent rather than placing them in foster care further traumatizing both the victim and the children;

(iii) provide instruction regarding the scope of legal remedies for the abused parent;

(iv) identify obstacles that prevent individuals from leaving their batterers and examine safety options and services available for the victim;

(v) provide information pertaining to the unique barriers facing certain immigrant women and the options available under the federal

Violence Against Women Act;

(vi) analyze procedures available to sanction and educate the abusing partner; and

(vii) emphasize the need for the system to hold the abusing partner responsible by appropriate referrals to law enforcement.

(h) make available on its website all award allocations for request for proposals issued by the office of children and family services upon release of such awards. Such information shall also include all organizations requesting funding and the amounts requested for each request for proposal. The office of children and family services may also include any other information related to each program that it deems appropriate;

(i) make available to the council on children and families information regarding: (1) all recipients of grants awarded or administered by the office of children and family services for the purposes of providing afterschool programs; (2) registered school age child care providers registered by the office of children and family services; and (3) home visiting programs that meet the criteria as required by section four hundred twenty-nine of this chapter regardless of whether they have a contract with or receive funding from the state. Such information shall be provided in accordance with the requirements set forth in subdivision two of section four hundred eighty-three-h of this chapter. Such information shall be made available no less than once a year; and

* (i) exercise such other powers and perform such other duties as may be imposed by law.

* NB Effective March 31, 2028

* (j) have the authority appoint a temporary operator in accordance with this subdivision:

(1) For the purposes of this subdivision:

(i) "Building" shall mean an entire building or a unit within that provides emergency shelter to homeless persons.

(ii) "Commissioner" shall mean the commissioner of the office or his or her designee.

(iii) "Data" shall mean written documentation or knowledge obtained in the course of an inspection, audits, or other methods authorized by law.

(iv) "Emergency shelter" means any building with overnight sleeping accommodations, the primary purpose of which is to provide temporary

shelter for the homeless in general or for specific populations of the homeless, including residential programs for victims of domestic violence and runaway and homeless youth programs certified by the office of children and family services.

(v) "Established operator" shall mean a provider of emergency shelter.

(vi) "Serious financial, health or safety deficiency" shall include, but not be limited to, missed mortgage payments, missed rent payments, a pattern of untimely payment of debts, failure to pay its employees or vendors, insufficient funds to meet the general operating expenses of the program, or a violation of law, regulation, or code with respect to a building that provides emergency shelter to homeless persons, in which there are conditions that are dangerous, hazardous, imminently detrimental to life or health, or otherwise render the building not fit for human habitation.

(vii) "Temporary operator" shall mean any provider of emergency shelter that:

(A) agrees to provide emergency shelter pursuant to this chapter on a temporary basis in the best interests of its homeless individuals and families served by the building;

(B) has a history of compliance with applicable laws, rules, and regulations and a record of providing emergency shelter of good quality, as determined by the commissioner; and

(C) prior to appointment as temporary operator, develops a plan determined to be satisfactory by the commissioner to address the building's deficiencies.

(2) (i) A temporary operator may only be appointed after the emergency shelter has been provided notice of alleged violations and the ability to cure such violations. The local social services district shall also be notified of the alleged violations prior to the appointment of a temporary operator. If the emergency shelter fails to cure such violations in a timely manner, a temporary operator may be appointed where: (A) data demonstrates that the building is exhibiting a serious financial, health, or safety deficiency; (B) data demonstrates that the established operator is unable or unwilling to ensure the proper operation of the building; or (C) data indicates there exist conditions that seriously endanger or jeopardize emergency shelter residents. If the commissioner determines to appoint a temporary operator, the

commissioner shall notify the established operator and the local social services district of his or her intention to appoint a temporary operator to assume sole responsibility for the provider of the emergency shelter's operations for a limited period of time. The appointment of a temporary operator shall be effectuated pursuant to this section, and shall be in addition to any other remedies provided by law.

(ii) The established operator may at any time request the commissioner to appoint a temporary operator. Upon receiving such a request, the commissioner may, if he or she determines that such an action is necessary, enter into an agreement with the established operator for the appointment of a temporary operator to restore or maintain the provision of quality emergency shelter to the emergency shelter residents until the established operator can resume operations within the designated time period or other action is taken to suspend, revoke, or limit the authority of the established operator.

(3) (i) A temporary operator appointed pursuant to this section shall use his or her best efforts to implement the plan deemed satisfactory by the commissioner to correct or eliminate any deficiencies in the building and to promote the quality and accessibility of the emergency shelter in the community served by the provider of emergency shelter.

(ii) During the term of appointment, the temporary operator shall have the authority to direct the staff of the established operator as necessary to appropriately provide emergency shelter for homeless individuals and families. The temporary operator shall, during this period, provide emergency shelter in such a manner as to promote safety and the quality and accessibility of emergency shelter in the community served by the established operator until either the established operator can resume operations or until the office revokes the authority of the emergency shelter to operate under this chapter.

(iii) The established operator shall grant access to the temporary operator to the established operator's accounts and records in order to address any serious financial, health or safety deficiency. The temporary operator shall approve any decision related to an established provider's day to day operations or the established provider's ability to provide emergency shelter.

(iv) The temporary operator shall not be required to file any bond. No security interest in any real or personal property comprising the

established operator or contained within the established operator or in any fixture of the building, shall be impaired or diminished in priority by the temporary operator. Neither the temporary operator nor the office shall engage in any activity that constitutes a confiscation of property.

(4) Costs associated with the temporary operator, including compensation, shall follow the financing structure established in accordance with section one hundred fifty-three of this chapter, as modified by the current aid to localities provisions for the office of temporary and disability assistance within the department of family assistance. The temporary operator shall be liable only in its capacity as temporary operator for injury to person and property by reason of its operation of such building; no liability shall incur in the temporary operator's personal capacity, except for gross negligence and intentional acts.

(5) (i) The initial term of the appointment of the temporary operator shall not exceed ninety days. After ninety days, if the commissioner determines that termination of the temporary operator would cause significant deterioration of the quality of, or access to, emergency shelter in the community or that reappointment is necessary to correct the deficiencies that required the appointment of the temporary operator, the commissioner may authorize an additional ninety-day term. However, such authorization shall include the commissioner's requirements for conclusion of the temporary operatorship to be satisfied within the additional term.

(ii) Within fourteen days prior to the termination of each term of the appointment of the temporary operator, the temporary operator shall submit to the commissioner, to the local social services district, and to the established operator a report describing:

(A) the actions taken during the appointment to address the identified building deficiencies, the resumption of building operations by the established operator, or the revocation of authority to operate an emergency shelter;

(B) objectives for the continuation of the temporary operatorship if necessary and a schedule for satisfaction of such objectives; and

(C) if applicable, the recommended actions for the ongoing provision of emergency shelter subsequent to the temporary operatorship.

(iii) The term of the initial appointment and of any subsequent reappointment may be terminated prior to the expiration of the designated term, if the established operator and the commissioner agree on a plan of correction and the implementation of such plan.

(6) (i) The commissioner shall, upon making a determination of an intention to appoint a temporary operator pursuant to subparagraph (i) of paragraph two of this subdivision, cause the established operator and the local social services district to be notified of the intention by registered or certified mail addressed to the principal office of the established operator and the local social services district. Such notification shall include a detailed description of the findings underlying the intention to appoint a temporary operator, and the date and time of a required meeting with the commissioner within ten business days of the receipt of such notice. At such meeting, the established operator, and the commissioner shall have the opportunity to review and discuss all relevant findings. At such meeting, the commissioner and the established operator shall attempt to develop a mutually satisfactory plan of correction and schedule for implementation. If a mutually satisfactory plan of correction and schedule for implementation is developed, the commissioner shall notify the established operator that the commissioner will abstain from appointing a temporary operator contingent upon the established operator remediating the identified deficiencies within the agreed upon timeframe.

(ii) The commissioner shall, upon making a determination of an intention to appoint a temporary operator pursuant to subparagraph (i) of paragraph two of this subdivision, cause the temporary president of the senate, and the speaker of the assembly to receive appropriate and timely notification of the intention to appoint a temporary operator. Such notification shall include a description of the findings underlying the intention to appoint a temporary operator, the identification of the new operator when practicable, and the date of expected transfer of operations. Such notice shall be made as soon as practicable under the circumstances.

(iii) The commissioner, at any time he or she deems necessary and to the extent practicable, shall consult and may involve the local social services district.

(iv) Should the commissioner and the established operator be unable to

establish a plan of correction pursuant to subparagraph (i) of this paragraph, or should the established operator fail to respond to the commissioner's initial notification, there shall be an administrative hearing on the commissioner's determination to appoint a temporary operator to begin no later than thirty days from the date of the notice to the established operator. Any such hearing shall be strictly limited to the issue of whether the determination of the commissioner to appoint a temporary operator is supported by substantial evidence. A copy of the decision shall be sent to the established operator and the local social services district.

(v) If the decision to appoint a temporary operator is upheld such temporary operator shall be appointed as soon as is practicable and shall provide emergency shelter pursuant to the provisions of this section.

(7) Notwithstanding the appointment of a temporary operator, the established operator shall remain obligated for the continued provision of emergency shelter. No provision contained in this section shall be deemed to relieve the established operator or any other person of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the established operator or any other person prior to the appointment of any temporary operator of the building hereunder; nor shall anything contained in this section be construed to suspend during the term of the appointment of the temporary operator of the building any obligation of the established operator or any other person for the maintenance and repair of the building, provision of utility services, payment of taxes or other operating and maintenance expenses of the building, nor of the established operator or any other person for the payment of mortgages or liens.

* NB Repealed March 31, 2028

* (k) exercise such other powers and perform such other duties as may be imposed by law.

* NB Repealed March 31, 2028

§ 20. Powers and duties of the department.

2. The department shall, as provided in this chapter:

(a) administer all the forms of public welfare work for which the state is responsible;

(b) supervise all social services work, as the same may be administered by any local unit of government and the social services officials thereof within the state, advise them in the performance of their official duties and regulate the financial assistance granted by the state in connection with said work;

(c) distribute, reimburse and grant as herein provided the funds appropriated by the legislature for such participation and also such funds as may be received from the federal government for such purpose or purposes.

3. The department is authorized:

(a) to supervise local social services departments and in exercising such supervision the department shall approve or disapprove rules, regulations and procedures made by local social services officials within thirty days after filing of same with the commissioner; such rules, regulations and procedures shall become operative immediately upon approval or on the thirtieth day after such submission to the commissioner unless the commissioner shall specifically disapprove said rule, regulation or procedure as being inconsistent with law or regulations of the department;

(b) in accordance with the provisions of this chapter to make reimbursements of local welfare costs on a participating basis established by law, to advance grants of money for local welfare purposes and to administer a discretionary fund for such purposes within the limit of available appropriations;

(c) to pay such per centum as the legislature shall determine, of the salaries of local administrative personnel as it shall determine to be qualified to perform the duties assigned;

(d) to establish rules, regulations and policies to carry out its powers and duties under this chapter;

(e) to withhold or deny state reimbursement, in whole or in part, from or to any social services district or any city or town thereof, in the event of the failure of either of them to comply with law, rules or regulations of the department relating to public assistance and care or the administration thereof;

(f) to promulgate any regulations the commissioner determines are necessary, in accordance with the provisions of section one hundred eleven-b of this chapter, and to withhold or deny state reimbursement, in whole or in part, from or to any social services district, in the event of the failure of any such district to comply with such regulations relating to such district's organization, administration, management or program. Upon withholding or denying state reimbursement, the commissioner shall notify the temporary president of the senate, the speaker of the assembly and the chairmen of the senate finance committee and assembly ways and means committee;

(g) to formulate plans for the recruitment, utilization and training of volunteers to assist in performing services and other duties in social services districts for the purpose of improving participation in public welfare programs;

(h) for the purpose of the proper administration of programs of public assistance and care, to enter into agreements not inconsistent with federal law, with public agencies responsible for the administration of public assistance and care in any geographically contiguous state, to receive information from such public agencies which is substantially similar to information obtained by the department from the wage reporting system operated by the state department of taxation and finance pursuant to section one hundred seventy-one-a of the tax law and, subject to the approval of the state department of taxation and finance, to provide such public agencies with information obtained from such wage reporting system; provided, however, that no such agreement shall be entered into with a public agency of any geographically contiguous state unless such state has by law established standards of confidentiality which are substantially similar to those contained in this chapter prohibiting the disclosure of such information. Upon receipt of wage information from such public agencies, the department shall furnish such information to the local social services districts;

(i) to assure conformance with federal law, by entering into agreements with the federal social security administration and public agencies in other states responsible for administering the food stamp program or programs under title I, II, IV-A, IV-D, X, XIV, XVI, or XIX of the social security act under which the department will provide such agencies, when required by federal law and only to the extent so

required, with data which may be of use in establishing or verifying eligibility for or benefit amounts in such programs or ability to pay support for a person receiving support collection services including data obtained from the wage reporting system operated by the state department of taxation and finance pursuant to section one hundred seventy-one-a of the tax law.

(j) to ensure the provision, on any form required to be completed at application or recertification for the purpose of obtaining financial assistance pursuant to this chapter, the form shall contain a check-off question asking whether the applicant or recipient or a member of his or her family served in the United States military, and an option to answer in the affirmative. Where the applicant or recipient answers in the affirmative to such question, the office of temporary and disability assistance shall ensure that contact information for the state department of veterans' services is provided to such applicant or recipient addition to any other materials provided.

4. The Department shall not withhold state reimbursement from or deny state reimbursement to a social services district, until written notice is given to the commissioner of the social services district affected, except when the reason for the proposed withholding or denying is that such commissioner does not meet the minimum qualifications required for such position, to the body or officer that appointed or purported to appoint such commissioner:

(a) entirely for any period; or

(b) in whole or in part, on ten per centum or more of all the cases in receipt of public assistance in such district in any period; or

(c) in whole or in part, on ten per centum or more of the cases in receipt of a specific category of assistance in such district in any period; or

(d) for any period, in an amount equal to or greater than ten per centum of the state reimbursement otherwise due the district for such period.

5. (a) In the case of the death of a child whose care and custody or custody and guardianship has been transferred to an authorized agency, other than a vulnerable person as defined in article eleven of this

chapter, or the death of a child for whom any local department of social services has an open child protective services or preventive services case, or in the case of a report made to the statewide central register of child abuse and maltreatment involving the death of a child, the office of children and family services shall (i) investigate or provide for an investigation of the cause of and circumstances surrounding such death, (ii) review such investigation, and (iii) prepare and issue a report on such death, except where a report is issued by an approved local or regional fatality review team in accordance with section four hundred twenty-two-b of this chapter.

(b) Such report shall include (i) the cause of death, whether from natural or other causes, (ii) identification of child protective or other services provided or actions taken regarding such child and his or her family, (iii) any extraordinary or pertinent information concerning the circumstances of the child's death, (iv) whether the child or the child's family had received assistance, care or services from the social services district prior to such child's death, (v) any action or further investigation undertaken by the department or by the local social services district since the death of the child, (vi) as appropriate, recommendations for local or state administrative or policy changes, and (vii) written comments as may be provided by any local social services district referenced in such report, to the extent that such comments: (A) protect the confidentiality and privacy of the deceased child, his or her siblings, the parent or other person legally responsible for such child, any other members of such child's household and the source of any report of suspected child abuse or maltreatment, and (B) are relevant to the fatality reported and pertain to any of the provisions of subparagraph (i), (ii), (iii), (iv), (v) or (vi) of this paragraph, provided that any comments that pertain to subparagraphs (i), (ii), (iii), (iv) or (v) of this paragraph must be factually accurate.

Such report shall contain no information that would identify the name of the deceased child, his or her siblings, the parent or other person legally responsible for the child or any other members of the child's household, but shall refer instead to the case, which may be denoted in any fashion determined appropriate by the department or a local social services district. In making a fatality report available to the public

pursuant to paragraph (c) of this subdivision, the department may respond to a child specific request for such report if the commissioner determines that such disclosure is not contrary to the best interests of the deceased child's siblings or other children in the household, pursuant to subdivision five of section four hundred twenty-two-a of this chapter. Except as it may apply directly to the cause of the death of the child, nothing herein shall be deemed to authorize the release or disclosure to the public of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family.

(c) Twenty days prior to the release of the report the department shall forward the proposed report to each local social services district referenced in the report. Within ten days thereafter, each local social services district may provide written comments in accordance with subparagraph (vii) of paragraph (b) of this subdivision to the department in the form and manner required by the department to be included by the department within the report. No later than six months from the date of the death of such child, the department shall forward its report to the social services district, chief county executive officer, chairperson of the local legislative body of the county where the child's death occurred and the social services district which had care and custody or custody and guardianship of the child, if different. The department shall notify the temporary president of the senate and the speaker of the assembly as to the issuance of such reports and, in addition to the requirements of section seventeen of this chapter, shall submit an annual cumulative report to the governor and the legislature incorporating the data in the above reports and including appropriate findings and recommendations. Such reports concerning the death of a child and such cumulative reports shall immediately thereafter be made available to the public after such forwarding or submittal.

(d) To enable the office of children and family services or a local or regional fatality review team to prepare such report, the office of children and family services or a local or regional fatality review team may request and shall timely receive from departments, boards, bureaus or other agencies of the state, or any of its political subdivisions, or any duly authorized agency, or any other agency which provided

assistance, care or services to the deceased child such information as they are authorized to provide.

6. The department is directed to seek appropriate approvals from federal officials to permit commissioners of jurors and clerks of the court or jury administrators of any United States district court in New York state appointed pursuant to title twenty-eight of the United States Code, section 1836(b)(2) in each social services district to obtain the names and addresses of persons applying for or receiving aid to dependent children, medicaid, or home relief authorized by this chapter for purposes of identifying prospective jurors. Upon receiving such approval or upon determining that no approval is necessary, notwithstanding sections one hundred thirty-six and three hundred sixty-nine of this chapter, the department shall provide lists of such persons to the chief administrator of the courts, appointed pursuant to section two hundred ten of the judiciary law, or the chief judge of any United States district court in New York State appointed pursuant to title twenty-eight of the United States Code. The lists shall be provided for the sole purpose of integration into lists of prospective jurors as provided by section five hundred six of the judiciary law or title twenty-eight of the United States Code. The chief administrator of the courts shall upon request provide information from the lists to the commissioner of jurors in each county or, in a county within a city having a population of one million or more, the county clerk of said county, solely for the purpose of compiling lists of prospective jurors for the appropriate county. The chief judge of such United States district court shall make lists available to such clerk of the court or jury administrator of a United States district court solely for the purpose of compiling lists of prospective jurors for the United States district court. The lists shall be provided only pursuant to a cooperative agreement between the chief administrator of the courts or, in the case of a United States district court, the chief judge of such United States district court and the commissioner that guarantees that all necessary steps shall be taken by the chief administrator of the courts, the chief judge of such United States district court, the commissioners of jurors and the county clerks or the clerk of the court or jury administrator or court clerk of the United States district court

to ensure that the lists are kept confidential and that there is no unauthorized use or disclosure of such lists. Furthermore, the lists will be provided only if the chief administrator of the courts or the chief judge of the United States district court determines that the lists are needed for integration into lists of prospective jurors in one or more counties or the district of such United States district court. Commissioners of jurors and county clerks, and clerks of the court or jury administrators or clerk of any United States district court receiving such lists shall not use any information derived from such lists for any purpose other than for the selection of jurors and shall take appropriate steps to see that the confidentiality of such information is maintained.

7. To the extent appropriations are available, the office of children and family services shall conduct a public education campaign that emphasizes zero tolerance for child abuse and maltreatment. Such campaign shall include information about the signs and symptoms of child abuse and maltreatment, the hotline available to report child abuse and maltreatment, and services that are available to assist families with underlying issues that may lead to child abuse and maltreatment including, but not limited to, substance abuse services, domestic violence services, mental health services for adults and services to assist families with children in need of mental health treatment. Such campaign may include, but not be limited to, educational and informational materials in print, audio, video, electronic and other media and public service announcements and advertisements.

8. (a) The office of temporary and disability assistance shall promulgate rules and regulations for the administration of this subdivision. The rules and regulations shall provide for the conditions under which local social services officials determine the placement of applicants for and recipients of public assistance for whom a notice pursuant to section two hundred three of the correction law, has been received and who are:

- (i) determined to be in immediate need of shelter; and
- (ii) designated a level two or level three sex offender pursuant to article six-C of the correction law.

(b) When making determinations in regard to the placement of such individuals in shelter, local social services officials shall consider the following factors:

(i) the location of other sex offenders required to register pursuant to the sex offender registration act, specifically whether there is a concentration of registered sex offenders in a certain residential area or municipality;

(ii) the number of registered sex offenders residing at a particular property;

(iii) proximity of the entities with vulnerable populations;

(iv) accessibility to family members, friends or other supportive services, including but not limited to locally available sex offender treatment programs with preference for placement of such individuals into programs that have demonstrated effectiveness in reducing sex offender recidivism and increasing public safety; and

(v) investigation and approval of such placement by the department of corrections and community supervision.

§ 20-a. Local personnel; limitations on department's power.

Notwithstanding any inconsistent provision of this chapter, the board, the commissioner or the department, acting singly or in unison, shall not have the power, directly or indirectly to prescribe the number of persons to be employed in any social services district providing the district complies with the minimum federal standards relating thereto.

§ 20-b. Plan for in-home care of senior citizens. On or before the first day of April, nineteen hundred eighty-two the New York state council for home care services, in consultation with the commissioner of social services and the office for the aging, shall prepare a plan designed to ease the burden of families providing care for elderly parents in the home of the parents or the homes of their families. Recommendations are to be made concerning, but not limited to, tax exemptions and increased availability of supportive services.

§ 20-c. Privatization. 1. (a) Except as otherwise specified in the appropriation for system support and information services program in the office of temporary disability assistance within the department of family assistance, or as authorized by subdivision two-a of section twenty-two of this article, the department shall not enter into any contract with a private entity under which that entity would perform any of the public assistance and care eligibility determination functions, duties or obligations of the department as set forth in this chapter.

(b) Social services districts may enter into a contract or agreement for the performance of functions, duties or obligations required to be performed pursuant to this chapter, however, the collective bargaining representative of employees who normally perform such functions or provide such services for such social services district shall be permitted the opportunity to competitively bid for any contract let pursuant to this section with the overall cost and quality of the proposal being major criteria in the selection.

2. No contract with a contractor for services pursuant to this section shall be entered into by the office or district unless the office or district contracting for such service has:

(a) Provided the certified collective bargaining organization representing the permanent employees affected by the district's exercise of its right to contract out with sixty days advance notice of its intent to contract out for services pursuant to this section;

(b) Considered whether the proposed contract will result in actual cost savings to the office; and

(c) Evaluated and made a favorable determination based upon a required disclosure of information from the potential contractor regarding any final actions relating to (a) the responsibility taken by any contracting agency, law enforcement authority or the department of labor against bidders, contractors or subcontractors and (b) debarments pursuant to express statutory authorization.

3. A contract shall not be approved unless it contains a description of the service quality expectations pursuant to the contract and a description of the method by which the quality of services shall be monitored and evaluated by the district based upon specific performance

measures contained in the contract. The proposed contract must include specific provisions pertaining to the qualifications of the staff that will perform the work under the contract. The proposed contract shall contain specific information regarding the actual number of employees to be retained, hours of work, wage rates and associated benefit levels, titles, and job descriptions.

4. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other local law or under the applicable collective bargaining agreement.

5. The provisions of this section shall not impair, restrict or otherwise modify applicable restrictions contained in federal law and regulations promulgated thereto.

§ 20-d. Training of direct care workers in adverse childhood experiences. 1. As used in this section:

(a) "Direct-care employees" means the employees of domestic violence shelters, safe dwellings, and domestic violence programs identified by the certifying organization to receive training, which shall include, but not be limited to, the directors and coordinators of such shelters, dwellings, and programs, and any individual or employee performing or required to perform similar responsibilities.

(b) "Certifying organization" means an organization designated by the federal department of health and human services to coordinate statewide improvements within local communities, social services systems, and programming regarding the prevention and intervention of domestic violence in New York state.

(c) "Adverse childhood experiences" or "ACEs" means stressful or traumatic experiences experienced during childhood, which are strongly related to the development and prevalence of a wide range of health problems throughout a person's lifetime, including, but not limited to physical or sexual abuse; domestic violence; parental mental illness; substance abuse; and incarceration.

2. The office of temporary and disability assistance and the office of

children and family services shall, within amounts appropriated for such purpose, contract exclusively with an entity, or with entities in partnership, to develop a training program for direct-care employees to identify individuals who have experienced ACEs, develop effective strategies for assisting and interacting with such individuals, and locate programs and services to which such individuals with ACEs may be referred to help build the individual's resilience. Such entity, or entities in partnership, shall be experienced in providing trauma-informed, victim-centered training on domestic violence, child abuse, and ACEs. Such entity, or entities in partnership, shall be responsible for providing such training to direct-care employees.

3. All direct-care employees shall be required to participate in such training program. Such training shall be provided at no cost to such employees.

4. The office of temporary and disability assistance and the office of children and family services shall, within amounts appropriated for such purpose, contract with a certifying organization to provide a certification of completion to each direct-care employee who satisfies the requirements of such training program.

§ 21. Welfare management system. 1. The department shall design and implement a welfare management system which shall be capable of receiving, maintaining and processing information relating to persons who have applied for or been determined eligible for benefits under any program for which the department has supervisory responsibilities under this chapter, for the purpose of providing individual and aggregate data to such districts to assist them in making eligibility determinations and basic management decisions, to the department to assist it in supervising the local administration of such programs, and to the governor and the legislature as may be necessary to assist in making major administrative and policy decisions affecting such programs. Such system shall be designed so as to assist local districts and the state in achieving the following goals:

a. reducing mismanagement in the administration of such program, detecting fraudulent practices, and helping identify policies or conditions that will reduce or deter fraud;

b. promoting efficiency in local district determinations of eligibility for public assistance and care and other programs supervised by the department, to expedite such determinations and to reduce unauthorized or excessive payments;

c. achieving compliance with federal laws and regulations and maximizing utilization of federal funds;

d. improving data collection and retention techniques and developing uniform reporting forms and procedures;

e. initiating implementation of such a system for districts other than the district comprising the city of New York, in a manner compatible with expansion of such system to the district comprising the city of New York;

f. being developed and implemented in each social services district, to the extent possible consistent with statewide uniformity, in a manner compatible with maximum utilization of existing data processing systems and capabilities of such district and with minimum local participation by such district in administrative expenditures directly attributable to the design and implementation of such system; and

g. achieving such other goals consistent with this chapter and other laws as are desirable for improving the administration of such programs.

2. The department shall promulgate regulations, specifying the types of information to be collected and transmitted by each social services district to the department, the methods for collection and transmittal of such information, and the procedures for utilization by social services districts of the data maintained by the welfare management system. Any such regulations shall be published for comment at least thirty days in advance of their promulgation and shall be filed with the

secretary of state at least sixty days in advance of the effective date of any such requirement.

3. Information relating to persons applying for or receiving benefits under programs pursuant to this chapter shall be considered confidential and shall not be disclosed to persons or agencies other than those considered entitled to such information in accordance with section one hundred thirty-six of this chapter, when such disclosure is necessary for the proper administration of such programs.

4. The commissioner of labor and his or her designees shall be entitled to access to the welfare management system and the information contained therein for the purpose of administration of the programs for public assistance recipients set forth in title nine-B of article five of this chapter. Use of the information relating to persons applying for or receiving benefits under such programs by the department of labor will be in accordance with the provisions of this chapter.

5. The commissioner of health and his or her designees shall be entitled to access to the welfare management system and the information contained therein for the purpose of administration of the program of medical assistance for needy persons set forth in title eleven of article five of this chapter. Use of the information relating to persons applying for or receiving benefits under such program by the department of health will be in accordance with the provisions of section one hundred thirty-six of this chapter.

6. By no later than forty-five days following the end of each calendar quarter after the second quarter of calendar year nineteen hundred seventy-six, the department shall, until full implementation has been achieved in all social services districts, report to the governor and the legislature regarding the current status of the welfare management system, summarizing the progress achieved during the previous quarter and the anticipated major achievements of the succeeding two calendar quarters. The report shall include the current and anticipated overall expenditure and staffing levels for functions relating to the system, and shall specify each district affected or anticipated to be affected

during the succeeding two calendar quarters and summarize the manner in which each such district is, or is anticipated to be, affected.

7. (a) The full cost of expenditures by the state for the design, development and implementation of the welfare management system shall be borne by the state, utilizing any federal funds made available for such purposes. Social services districts shall not be responsible for participating in state expenditures for any of the following: acquisition, installation, maintenance and operation of a state computer; acquisition, installation and maintenance of the telecommunications network and equipment; development and provision of state mandated forms; modification of existing data processing operations determined by the department to be necessary to assure systems compatibility; and development and provision of training materials and equipment, and costs of staff for training provided by the state.

(b) Expenditures by a social services district for data entry operators determined necessary by the department during the period of conversion to full operation of the welfare management system for such district shall be subject to reimbursement by the state in accordance with section one hundred fifty-three of this chapter to the extent of one hundred percentum of such expenditures after first deducting therefrom any federal funds properly received or to be received on account of such expenditures.

(c) Expenditures by a social services district other than those set forth in this section shall be subject to state reimbursement as administrative costs in accordance with section one hundred fifty-three of this chapter to the extent of fifty percentum thereof, after first deducting therefrom any federal funds properly received or to be received on account of such expenditures.

(d) The department is hereby authorized to enter into written agreements, subject to the approval of the director of the budget, with not more than three social services districts by which such districts agree to undertake additional administrative functions relating to design, development and testing of the welfare management system, subject to one hundred percent state reimbursement for administrative costs attributable to such functions, after first deducting therefrom

any federal funds properly received or to be received on account of such expenditures.

8. The department may enter into the case file of each applicant for or recipient of benefits under the programs of food stamps, aid to dependent children, home relief, veteran assistance, emergency assistance to adults, or medical assistance for whom a case file has been established on the welfare management system information it receives from the appropriate governmental agency concerning a client who has applied for or has been determined to be eligible for workers' compensation benefits, unemployment insurance benefits, and benefits being paid pursuant to titles two and sixteen of the federal social security act (including supplemental state payments). The department may rebudget any case for which it makes an entry where the information received indicates that rebudgeting is appropriate. The department shall immediately notify the appropriate social services district that an applicant or recipient's case has been rebudgeted or of any other direct entry of information into a case file. A social services district shall not be held responsible for any costs incurred as a result of data erroneously entered by the department into the welfare management system.

§ 21-a. Electronic benefit transfer system. Any electronic benefit transfer system shall be implemented by the department on a statewide basis and shall be administered pursuant to the provisions of this section. For purposes of such electronic benefit transfer system, the term "electronic benefit transfer" includes the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

1. (a) Any contract entered into on behalf of local social services districts for electronic benefit transfer services shall ensure that there are a sufficient number of access points in each local social services district to ensure an adequate distribution of such services. Upon implementation of an electronic benefit transfer system in a local

social services district or in any political or other geographic subdivision of such district, the department shall publish a list identifying the number and location of access points within such district or subdivision, and shall seek and accept public comment on the adequacy of recipient access to electronic benefit transfer services within such district or subdivision. The department shall seek to maximize recipient access to electronic benefit transfer services by working with the contractor to establish access points at a broad range of businesses and community facilities including, but not limited to, community centers, senior citizen centers, educational and job skills training sites, and local housing authorities.

(b) Any electronic benefit transfer services for supplemental nutrition assistance program (SNAP) benefits shall ensure that two electronic benefit transfer credit or debit cards are issued for use by any recipient household having more than one parent or guardian residing in the household on a full-time basis, provided that at least two parents or guardians residing in the household, or a combination thereof, qualify for benefits pursuant to this chapter. No card shall be issued to any person under the age of eighteen unless such person is a parent or guardian of a minor child. The issuance of a second card shall be consistent with federal requirements and is subject to the request and approval by the head of household and shall not entitle the recipients to any additional benefits. Benefit recipients shall not be required to accept or utilize both cards. The department shall notify existing and future benefit recipients of the availability of multiple cards.

(c) Any interactive voice response system associated with an electronic benefit transfer system which benefit recipients may call for support or assistance shall include an option for benefit recipients to cancel such benefit recipient's electronic benefit transfer card permanently or lock or unlock such benefit recipient's electronic benefit transfer card.

2. The department or the designated agent thereof shall utilize appropriate materials and training to provide each recipient with adequate instruction on the use of the electronic benefit transfer system, which shall include, but not be limited to, the following:

(a) the types of transactions and services provided by means of an electronic benefit transfer system, and any limitations thereon;

(b) the rights, responsibilities and liabilities applicable to recipients that receive benefits by means of an electronic benefit transfer system;

(c) the procedure for reporting the loss or theft of a system access device, or any unauthorized transaction;

(d) the process for the replacement of a lost or stolen system access device, and the procedure to access benefits, if needed, until such time as such device can be replaced; and

(e) the procedure by which participants can access information about their benefit account or accounts including, but not limited to, a toll-free telephone number which would provide recipients with account balances and transaction history.

§ 22. Appeals and fair hearings; judicial review. 1. Any person described in subdivision three of this section, or any individual authorized to act on behalf of any such person, may appeal to the department from decisions of social services officials or failures to make decisions upon grounds specified in subdivision five of this section. The department shall review the case and give such person an opportunity for a fair hearing thereon. The department may also, on its own motion, review any decision made or any case in which a decision has not been made by a social services official within the time specified by law or regulations of the department. The department may make such additional investigation as it may deem necessary, and the commissioner shall make such decision as is justified and is in conformity with the provisions of this chapter, the regulations of the department, a comprehensive annual services program plan then in effect pursuant to title twenty of the federal social security act and any other applicable provisions of law.

2. In connection with any appeal pursuant to this section, with or without a fair hearing, the commissioner may designate and authorize one or more appropriate members of his staff to consider and decide such appeals. Any staff member so designated and authorized shall have

authority to decide such appeals on behalf of the commissioner with the same force and effect as if the commissioner had made the decisions. Fair hearings held in connection with such appeals shall be held on behalf of the commissioner by members of his staff who are employed for such purposes or who have been designated and authorized by him therefor. The provisions of this subdivision shall apply to fair hearings conducted pursuant to subdivision eight of section four hundred twenty-two of this chapter, and to any hearing required pursuant to this chapter concerning the denial, suspension or revocation of any permit, certificate or license, and to any hearing held pursuant to section four hundred fifty-five of this chapter.

* 2-a. With regard to fair hearings held in connection with appeals for integrated fair hearing and appeals processes for individuals dually eligible for medical assistance and benefits available under titles XVIII and XIX of the federal social security act, the commissioner may contract for the sole purpose of assisting staff of the office for such purpose.

* NB Expires January 1, 2028

3. Persons entitled to appeal to the department pursuant to this section shall include:

(a) Applicants for or recipients of aid to dependent children, emergency assistance for families with dependent children, home relief, veteran assistance, medical assistance for needy persons and any service authorized or required to be made available in the geographic area in which such person resides, pursuant to the provisions of this chapter;

(b) Applicants for or participants in the food stamp program, pursuant to section ninety-five of this chapter and regulations of the department;

(c) Applicants for or recipients of emergency assistance for aged, blind and disabled persons, pursuant to title eight of article five of this chapter, so long as such emergency assistance is available pursuant to such law;

(d) Aggrieved persons described in section four hundred of this chapter;

* (e) Aggrieved persons, agencies or social services districts described in section three hundred seventy-two-e of this chapter;

* NB Effective until June 30, 2027

* (e) Aggrieved persons, agencies or social services districts described in sections one hundred fifty-three-d, three hundred seventy-two-e and three hundred ninety-eight-b of this chapter;

* NB Effective June 30, 2027

(f) Unless an agreement is in effect for federal administration of additional state payments pursuant to section two hundred eleven of this chapter, applicants for and recipients of additional state payments as defined in subdivision two of section two hundred eight of this chapter; and

(g) Other persons entitled to an opportunity for fair hearings pursuant to regulations of the department.

4. (a) Except as provided in paragraph (c) of subdivision two of section four hundred twenty-four-a of this chapter and in paragraph (b) of this subdivision, any appeal pursuant to this section must be requested within sixty days after the date of the action or failure to act complained of.

(b) Unless a different period is mandated by federal law or regulations, a person is allowed to request a fair hearing on any action of a social services district relating to food stamp benefits or loss of food stamp benefits which occurred in the ninety days preceding the request for a hearing. For purposes of this paragraph, such action includes a denial of a request for restoration of any benefits lost more than ninety days but less than a year prior to the request. In addition, at any time within the period for which a person is certified to receive food stamp benefits, such person may request a fair hearing to dispute the current level of benefits.

5. Grounds for such appeals shall be specified in regulations of the department, but shall include at least the following:

(a) Denial of any application.

(b) Failure to act upon any application within thirty days after filing, except applications for home relief, or failure to comply with laws and regulations requiring that priority be given to certain applications for assistance, or failure to act on any application for home relief within forty-five days after filing.

(c) Inadequacy in amount or manner of payment of assistance.

(d) Discontinuance in whole or in part of assistance, or termination of a service authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect.

(e) Failure to permit a parent or guardian to visit the child or failure to provide supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state consolidated services plan, to the child and to the parent or guardian, pursuant to an instrument executed under section three hundred eighty-four-a of this chapter.

(f) Failure to provide adoption services or assistance to a prospective adoptive parent on behalf of a child freed for adoption as defined in subdivision (b) of section one thousand eighty-seven of the family court act pursuant to section three hundred seventy-two-b of this chapter and the local social services district's consolidated services plan.

6. In scheduling fair hearings on appeals concerning applications for emergency assistance pursuant to section three hundred fifty-j or title eight of article five of this chapter, the department shall give priority to the hearing and determination of such appeals.

7. For the purposes of this section, except subdivision nine, social services officials shall include the persons described in subdivision fourteen of section two of this chapter and also the head of any bureau of the department which exercises responsibility pursuant to this chapter for determining eligibility for and furnishing public assistance and care to persons in family care pursuant to section one hundred thirty-eight-a of this chapter, or for determining eligibility for and furnishing medical assistance pursuant to subdivision two, three or four of section three hundred sixty-five of this chapter, or for determining eligibility for and furnishing services pursuant to section two hundred fifty-three of this chapter.

8. The department shall promulgate such regulations, not inconsistent with federal or state law, as may be necessary to implement the provisions of this section. Such regulations shall require that a copy

of all decisions made concerning appeals pursuant to this section shall be sent to each party to such appeals and their representatives, if any.

9. (a) All decisions of the commissioner pursuant to this section shall be binding upon the social services districts involved and shall be complied with by the social services officials thereof.

(b) Any aggrieved party to an appeal, including a social services official provided an application by any such social services official has not been determined by any federal agency to be in violation of federal law, may apply for review as provided in article seventy-eight of the civil practice law and rules.

(c) The provisions of paragraph (a) shall be applicable to a social services official after the decision of the commissioner becomes final and binding unless a court stays such decision. No such stay shall be issued by any court unless the social services official establishes that irreputable harm will result if a stay is not granted, and the probability that he will succeed on the merits. In an action or proceeding to review a decision of the commissioner, the applicant or recipient and his representative, if any, shall be served with copies of all pleadings and shall be allowed to intervene in such action or proceeding as a matter of right. Notwithstanding any provision of the civil practice law and rules or any other law to the contrary, any application by a social services official for a stay in a proceeding commenced by such official pursuant to this section shall be determined by the appropriate appellate division, and not by a justice of the supreme court. Whenever the commissioner has sustained an appeal by a recipient of public assistance or care with respect to benefits which were continued pending the fair hearing decision, the appellate division shall not stay the fair hearing decision prior to the initial determination of the proceeding initiated pursuant to this section for the review of such fair hearing decision.

(d) Every person entitled to a benefit pursuant to a decision of the commissioner under this section, shall be advised to contact the department in a manner specified by department regulations, in the event that a local social services district does not comply with such decision.

10. In connection with every determination of an appeal pursuant to this section, the department shall inform every party thereto, and his representative, if any, of the availability of judicial review and the time limitation thereon.

11. The provisions of subdivisions three and four of section twenty of this chapter shall be applicable to state reimbursement otherwise payable to any social services district in the event of the failure of a social services official to comply with a commissioner's determination upon an appeal within the time required by regulations of the department or such additional time as the commissioner may allow. In the event that the court stays any such determination in a proceeding pursuant to article seventy-eight of the civil practice law and rules, state reimbursement shall not be withheld or denied pursuant to this subdivision for non-compliance during such stay. Nothing in this subdivision shall limit the power of a court in a proceeding pursuant to article seventy-eight of the civil practice law and rules to order a social services official to comply with a commissioner's determination upon an appeal.

12. Every applicant or recipient of public assistance and care shall be informed in writing, through the distribution of an informational pamphlet, at the time of application and at the time of any action affecting his receipt of assistance or care:

- (a) of his right to an appeal or fair hearing;
- (b) of the method by which he may obtain an appeal or fair hearing;
- (c) of his right to representation by legal counsel, or by a relative, friend, or other spokesmen, or that he may represent himself;
- (d) of the availability of community legal services to assist him in the appeal or fair hearings process;
- (e) of the nature of the procedures to be followed throughout an appeal or fair hearing;
- (f) of the types of information he may wish to submit at an appeal or fair hearing;
- (g) of any additional information which would clarify the appeals and fair hearings procedure for applicants and recipients of public assistance and care, and would assist such persons in more adequate

preparation for such hearings.

13. Whenever under other provisions of this chapter an applicant or recipient of public assistance or care may appeal to the department a decision of a social services official, or the failure of such official to act on his application within the required period, and may request a fair hearing thereon, if such applicant or recipient requires legal services in connection with such an appeal and fair hearing and such services are not otherwise available to him, the social services official shall, upon request, make provision for payment for such legal services if required by federal law or regulations.

14. To provide an analysis of the outcome of the fair hearings process within the office of temporary and disability assistance to identify inadequacies and potential improvements in the functioning of the fair hearings system, such office shall prepare for inclusion in the annual report required by subdivision (d) of section seventeen of this article to be filed with the governor and the legislature prior to the fifteenth day of December of each year, a report containing with respect to income maintenance programs, including the family assistance program, the safety net assistance program, the medical assistance program and any other program, the number of affirmations and reversals by local districts and by program including a breakdown by local districts of the number of fair hearings requested by program and the number of fair hearings held by program, formal requests by local districts and recipients for reconsideration or rehearing of appeals, and a summary of court actions on hearing decisions.

§ 23. Wage reporting system. 1. The department is authorized to provide information obtained from the wage reporting system as operated by the state department of taxation and finance:

(a) to social services districts:

(i) with respect to applicants for and recipients of public assistance and care or other benefits pursuant to this chapter for which such districts are responsible;

(ii) with respect to any person legally responsible for the support of

such applicants and recipients;

(iii) with respect to any person legally responsible for the support of a recipient of services under section one hundred eleven-g of this chapter or to any agent of any entity that is under contract with the child support program pursuant to title six-A of article three of this chapter; and

(iv) with respect to the parents, the stepparents, the child and the siblings of the child who were living in the same household as a child who is in the custody, care and custody or custody and guardianship of a local social services district or of the office of children and family services during the month that the court proceedings leading to the child's removal from the household were initiated, or the written instrument transferring care and custody of the child pursuant to the provisions of section three hundred fifty-eight-a of this chapter or section three hundred eighty-four-a of this chapter was signed, provided however, that such social services district shall only use the information obtained pursuant to this subdivision for the purpose of determining the eligibility of such child for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act,

(b) to a public agency responsible for the administration of public assistance and care in any geographically contiguous state with which the department has an agreement with respect to wage information pursuant to paragraph (h) of subdivision three of section twenty of this article,

* (c) to social services districts with respect to participants in employment or training programs authorized pursuant to this chapter who are current recipients of public assistance and care or who are former recipients of public assistance and care, (except that with regard to former recipients, information which relates to a particular former recipient shall be provided with client identifying data deleted) for the purpose of evaluating the effect of participation in such programs on such current and former recipients, and

* NB There are 2 par (c)'s

* (c) to the federal parent locator service, maintained by the federal department of health and human services, as required by section one hundred twenty-four of the federal family support act of nineteen

hundred eighty-eight, for the purpose of enabling the department to fulfill obligations and responsibilities otherwise incumbent upon the state department of labor.

* NB There are 2 par (c)'s

(d) to the federal social security administration or public agency of another state with which the department has an agreement with respect to wage information pursuant to paragraph (i) of subdivision three of section twenty of this article.

2. Notwithstanding any law to the contrary, the department, upon request by the office of welfare inspector general, shall provide said office with such information it receives from the wage reporting system operated by the department of taxation and finance that the office of welfare inspector general deems necessary to carry out its functions and duties under article four of the executive law.

3. Information obtained by the office of temporary and disability assistance from the wage reporting system operated by the state department of taxation and finance shall be considered confidential and shall not be disclosed to persons or agencies other than those considered entitled to such information when such disclosure is necessary for the proper administration of programs of public assistance and care or for the proper administration of the child support program pursuant to title six-A of article three of this chapter, or of eligibility assessments of children for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act. For the purpose of this subdivision, any disclosure made pursuant to subdivision one of this section shall be considered necessary for the proper administration of programs of public assistance and care, or of eligibility assessments of children for federal payments for foster care and adoption assistance pursuant to the provisions of title IV-E of the federal social security act; and the federal parent locator service shall be considered an agency entitled to such information as is necessary for the proper administration of the child support program pursuant to title six-A of article three of this chapter.

§ 28. Gifts and bequests. The department may receive and retain any money or other personal property given or bequeathed to the department or a division or bureau thereof and shall expend the same in accordance with the general powers and duties of the department for the purposes for which it is given or, if unaccompanied by conditions or limitations, for such purposes as it may determine.

§ 29. Federal agency. The department, with the approval of the governor, may accept a designation from, and act as, the agent of the federal security agency or other duly authorized federal agency in the administration of relief and related activities, activities affecting the welfare of individuals and communities, and the disbursement or expenditure of federal funds or commodities in relation thereto within the state of New York.

§ 30. Continuation of salaries of local and state welfare employees receiving training for the better performance of their duties. Subject to the approval of the department, the board of supervisors of a county and the appropriating body of a city or town may include in its appropriations moneys for the continuation of the salaries of their local welfare employees who are on leave receiving additional training for the better performance of their duties, provided that no such salaries shall be so continued to a greater extent than will reimburse such employee for the loss of earnings while on such leave. Salaries of the employees of the department may be continued in a similar fashion.

§ 31. Fellowships and scholarships for local and state public welfare employees. The department, under regulations which it shall prescribe, and from moneys received or appropriated for such purpose, is authorized to grant fellowships and scholarships to local and state public welfare employees to enable them to receive additional training for the better performance of their duties.

§ 32. Reciprocal agreements. The department is authorized to enter into reciprocal agreements with corresponding state agencies of other states regarding interstate transportation of dependent and indigent persons, and to arrange with the proper officials in this state for the acceptance, transfer and support of persons receiving public assistance and care in other states in accordance with the terms of such reciprocal agreements, but this state shall not nor shall any county or other political subdivision of this state be committed to the support of persons who are not, in the opinion of the department, entitled to public support by the laws of this state. No agreement made pursuant to the provisions of this section shall become effective until the attorney-general has approved its form and sufficiency and determined its legal effect.

§ 33. Contracts for supplies and commodities needed in the administration of assistance. The department may

(a) make agreements for supplies and commodities needed in the administration of assistance and care, under which local welfare units may, subject to the approval of the department, purchase such supplies and commodities; and

(b) in accordance with requisitions duly approved by the commissioner of general services, purchase as the agent of local welfare units and on their request, supplies or commodities needed in the administration of assistance and care and make payments therefor after making proper deductions from state reimbursements due the local units which avail themselves of the provisions of this subdivision.

§ 34. General powers and duties of the commissioner. 1. The commissioner of social services shall be the chief administrative officer of the department.

2. All the administrative and executive powers and duties of the department shall be vested in the commissioner.

3. The commissioner shall

(a) continue to have, exercise, and perform the functions, powers and duties conferred by law upon the commissioner of social services;

(b) execute and issue the determinations, decisions, orders, notices, licenses and certificates of the department as may be required in the exercise and performance of the functions, powers and duties conferred upon or vested in the department;

(c) take cognizance of the interests of health and welfare of the inhabitants of the state who lack or are threatened with the deprivation of the necessities of life and of all matters pertaining thereto;

(d) exercise general supervision over the work of all local welfare authorities;

(e) enforce this chapter and the regulations of the department within the state and in the local governmental units;

(f) establish regulations for administration of public assistance and care within the state both by the state itself and by the local governmental units, in accordance with law;

(g) provide technical assistance, advisory and consultative services to business, industry and labor to encourage their sponsorship of day care centers;

(h) in consultation with the department of education, the department of health, the division for youth, the office for people with developmental disabilities and the office of mental health, establish guidelines for the acceptance by social services officials of notices that children in foster care are at risk of educational placements, as provided for in subparagraph four of paragraph b of subdivision one of section forty-four hundred two of the education law. Such guidelines shall be designed to assure that the social services district receiving such a notice inquire into the educational needs of the child and the circumstances of the foster care placement, and to assure that the social services district responds as appropriate to any request by a committee on special education to participate in the proceedings of the committee;

(i) exercise such other powers and perform such other duties as may be required by law.

4. Notwithstanding any inconsistent provision of the civil service

law, the commissioner may, if he finds that the chief executive officer of any county or city social services department has failed properly to perform his duties as required by law or rules and regulations of the department, present charges and specifications thereof to the appointing officer or authority of such county or city social services district. Such appointing officer or authority shall, upon receipt of such charges or specifications give notice thereof to the chief executive officer of the social services department and shall make inquiry into the merits of such specifications at a hearing thereon. The commissioner may present his evidence at such hearing and recommend removal or other appropriate sanctions. In the event the appointing authority finds the charges and specifications made by the commissioner are substantiated, the appointing officer or authority shall forthwith remove such chief executive officer or apply other sanctions. Any deputy or other employee of any such officer may also be removed or sanctioned upon the recommendation of the commissioner, in the same manner. Such removal or other sanction may not be appealed to a civil service commission, but may be subject to review pursuant to article seventy-eight of the civil practice law and rules. The provisions of this section shall not be deemed to preclude the exercise of the power of removal or sanction by the officer or authority having the power of appointment.

5. The commissioner or any official by him authorized so to do

(a) may conduct any inquiry pertinent or material to the discharge of the duties imposed upon him by law;

(b) is empowered to subpoena witnesses, administer oaths, take testimony and compel the production of such books, papers, records and documents as may be relevant to any such investigation.

6. The commissioner may exercise such additional powers and duties as may be required for the effective administration of the department and of the state system of public aid and assistance.

§ 34-a. Services planning requirements. 1. (a) Each social services district shall prepare a multi-year consolidated services plan encompassing adult services and family and children's services, which

shall include diversion services provided pursuant to section seven hundred thirty-five of the family court act.

(b) Commencing with the years following preparation of the multi-year consolidated services plan, each local district shall also be required to prepare an annual implementation report.

2. (a) The commissioner shall have authority to promulgate regulations specifying the contents of both the multi-year services plan and the annual implementation reports, provided however that such regulations shall not be inconsistent with the standards of review by the commissioner of such plan and reports specified in subdivision four of this section.

(b) The regulations promulgated pursuant to paragraph (a) of this subdivision shall require the multi-year services plan and where appropriate the annual implementation reports, to include a summary of the understanding between the local social services district and the district attorney's office, which outlines the cooperative procedures to be followed by both parties in investigating incidents of child abuse and maltreatment, consistent with their respective obligations for the investigation or prosecution of such incidents, as otherwise required by law.

3. (a) There shall be a public hearing on the multi-year services plan or each annual implementation report. Commencing in nineteen hundred eighty-two, such public hearing shall be held only after fifteen days notice is provided in a newspaper of general circulation within the county. Such notice shall specifically identify the times of the public hearing in which the child protective services and other services components of the multi-year services plan or annual implementation reports are to be considered.

(b) Commencing in nineteen hundred eighty-two, after such hearing, the multi-year services plan or the annual implementation reports shall be submitted for approval to the chief executive officer of the county or to the legislative body in those counties without a chief executive officer. Full approval of the multi-year services plan or of the annual implementation report by the chief executive officer or legislative body shall be required before submission of such plan or report to the

commissioner.

(c) Commencing in nineteen hundred eighty-two, the multi-year services plan or the annual implementation reports shall not be forwarded to the commissioner until at least fifteen days have passed from the date of the public hearing thereon.

4. (a) Except as provided in paragraph (b) of this subdivision, the commissioner shall review both the multi-year services plan and the annual implementation reports submitted by the social services district, using standards consistent with the provisions of sections one hundred thirty-one-1, four hundred nine-d and four hundred twenty-three of this chapter, and shall notify such district, in writing, of approval of such plan or reports in whole or in part; provided, however, that for any portions not approved, the commissioner shall in writing to the district specify the portions not approved, the reasons for such determination, the actions required for resubmittal of such portions, and the time period of resubmittal; and provided further, that disapproval of a portion of such plan or report shall not render the entire plan or report invalid. No portion of the multi-year services plan or of the annual implementation reports shall be finally disapproved until the district has had at least one opportunity for resubmittal. Upon resubmittal, or if no resubmittal is made within the time specified, the commissioner may grant further extensions to the district to allow it to resubmit any unapproved portions, or may finally disapprove such portions. Any social services district aggrieved by a final disapproval of the commissioner under this section shall have the right to a fair hearing in accordance with the appropriate provisions of this chapter. An adverse fair hearing decision shall be reviewable pursuant to article seventy-eight of the civil practice law and rules. State reimbursement may be withheld for all or a portion of a local district's activities, if the multi-year services plan, annual implementation report, or portions of either are disapproved.

(b) The commissioner of the office of children and family services shall review and approve or disapprove the diversion services portion of the plan jointly with the director of the office of probation and correctional alternatives or any other successor agency or entity. The requirements for the portion of the plan and report regarding the

provision of diversion services shall be jointly established by the commissioner of the office of children and family services and the director of the office of probation and correctional alternatives or any other successor agency or entity. The multi-year services plan and where appropriate the annual implementation reports shall be based upon a written understanding between the local social services district and the probation department which outlines the cooperative procedures to be followed by both parties regarding diversion services pursuant to section seven hundred thirty-five of the family court act, consistent with their respective obligations as otherwise required by law.

5. The commissioner shall promulgate regulations concerning the time by which:

(a) each local social services district shall submit its multi-year services plan and annual implementation report;

(b) the commissioner shall, in writing, notify a local district of approval or disapproval of all or parts of such district's multi-year services plan or annual implementation reports; and

(c) each local social services district shall submit a revised version of its multi-year services plan or annual implementation report, or parts thereof.

6. (a) Notwithstanding any other provision of law, the office of children and family services shall plan for the statewide implementation, by the thirty-first day of December, two thousand eight, of the use by counties of a child and family services plan that combines the multi-year consolidated services plan required by this section and the comprehensive plan required by section four hundred twenty of the executive law into a single plan.

(b) All counties shall implement a county child and family services plan prior to or by the two thousand eight plan year in accordance with a schedule developed by the office of children and family services and shall continue to implement such a plan thereafter. With the approval of such office, a county may implement such a plan before the date required by such schedule.

(c) The office of children and family services may waive any regulatory requirements relating to the content and timing of multi-year

consolidated services plans and annual implementation reports that may impede the ability of a county to implement a county child and family services plan.

(d) Nothing in this subdivision shall be deemed to affect county planning requirements under the mental hygiene law.

7. (a) From monies appropriated to the office of children and family services for the family and children's services foster care and adoption program, the office shall give assistance to local social services districts to enable them to collect statistics and to describe the steps being taken regarding: the number of families needing preventive services as provided for in title four of article six of this chapter for which services are provided; the effectiveness of specific preventive services in preventing unnecessary foster care placements and reducing the length of stay in foster care; the efforts made to prevent unnecessary placements; the use of the least restrictive settings and the proximity of foster care placements to the child's home; the use of kinship placements; the placement of siblings with one another at initial placement or as soon thereafter as possible; the number of transfers of children in foster care placements and the reasons for those transfers; the number of families reunited in fulfillment of the child's service goal plan and the length of placement prior to reunification; the number of children prepared for independent living; the number of children with adoption as a service plan goal; the number of children freed for adoption and the length of time taken to secure terminations of parental rights; the number of children placed in pre-adoptive homes and the number of adoptions completed and the length of time taken to complete them.

(b) Such data submitted to the office of children and family services shall be aggregated and submitted with a narrative report on these children's services, to the governor and the majority leader of the senate and the speaker of the assembly on or before July first, two thousand five and semiannually thereafter.

8. The commissioner of the office of children and family services shall, in conjunction with the commissioner of education, develop model practices and procedures for local social services districts and school

districts regarding the reporting and investigation of educational neglect. Such model practices and procedures shall be available to social services districts and school districts and shall be posted on the office of children and family services website and the state department of education website by September first, two thousand seven. Each social services district shall, in conjunction with local school districts within its district, submit written policies and procedures regarding the reporting of educational neglect by each school district within such social services district and the investigation of educational neglect allegations by child protective services. Such policies and procedures shall be submitted to the office of children and family services for review by January first, two thousand eight and the office shall approve or disapprove such local policies and procedures, based upon the model practices and procedures established in conjunction with the state department of education, within sixty days of submission.

9. (a) If a social services district proposes an amendment to the child care portion of its child and family services plan that reduces eligibility or increases the family share percentage for child care services such district must: (i) no later than the first day the public notice appears in a newspaper pursuant to subdivision three of this section or the regulations of the office of children and family services, as applicable, prominently post on the district's website a notice of the proposed amendment describing the categories of families whose cases will be impacted; and (ii) at the time the public notice is submitted to the newspaper for publication in accordance with subdivision three of this section or the regulations of the office of children and family services, as applicable, provide a copy of such notice to the office of children and family services.

(b) If a social services district implements its process for closing child care cases, as set forth in its approved child and family services plan, due to the district determining that it cannot maintain its current caseload because all of the available funds are projected to be needed for open cases, the district must: (i) no later than the day the social services district begins to send individual notices to impacted families in accordance with subdivision eight of section four hundred ten-w of this chapter, prominently post a notice on their website that

states that such district is implementing the child care case closing process set forth in its approved child and family services plan and that describes the categories of families whose cases will be closed; and (ii) immediately provide a copy of such notice to the office of children and family services.

(c) The office of children and family services shall prominently post notices received pursuant to paragraphs (a) or (b) of this subdivision on its website.

§ 35. Legal representation of individuals whose federal disability benefits have been denied or may be discontinued. 1. The commissioner shall establish criteria for selection of grant applications, review applications awarded pursuant to the provisions of this section, and exercise and perform such other functions as are related to the purposes of this section.

2. The commissioner shall make grants, within the amounts appropriated for that purpose, to not-for-profit legal services corporations and not-for-profit agencies serving the disabled and local social services districts, to provide for representation of persons whose federal disability benefits including supplemental security income and social security disability insurance have been denied or may be discontinued for the purpose of representing these persons in appropriate proceedings. When the commissioner has contracted with a local social services district to provide such representation, the legislative body of such district may authorize and make provision for the commissioner of social services of the district to obtain necessary legal services on a fee for services basis or other appropriate basis which the department may approve. Such legal services may be provided by not-for-profit legal services corporations, not-for-profit agencies serving the disabled or private attorneys.

3. The commissioner shall submit a report to the chairman of the senate finance committee and the chairman of the assembly ways and means committee on or before the first day of October, nineteen hundred ninety-eight and biannually thereafter. Such a report shall include but

not be limited to a review of the basis for selection of participating entities; the administrative method used to carry out the program; the number of cases appealed by district; the disposition of such appeals; an identification of the savings and costs of the program to the state and localities by district; an evaluation of the continuing need for legal representation provided by the program and recommendations for possible federal and state legislative and regulatory actions relating thereto.

4. Responsibility for local financial participation shall be determined by the commissioner based on either costs of and the number of district residents served by each local entity or the alternative cost allocation procedure deemed appropriate by the commissioner.

§ 36. Studies. The department shall, in so far as available appropriations will permit, study and collect information in relation to

(a) the number and conditions of persons who lack or are threatened with the deprivation of the necessities of life, or seek, or are receiving public assistance or care and all matters pertaining thereto, including the causes thereof and advise measures for their relief, and also for the relief of those in receipt of aid from private charity;

(b) unemployment, poverty, economic distress and other problems of social welfare generally as may be useful in the discharge of its duties or contribute to the promotion of social and economic security;

(c) the number of recipients of aid in, and the receipts and expenditures of, each public welfare district;

(d) dependency and local conditions relative thereto;

(e) such other matters in respect to public and private charities as it may deem advisable;

and shall publish such information as it deems of public concern and which may be of value in the performance of its duties.

§ 36-a. Department research and demonstration projects. 1. The department is authorized to sponsor, conduct and participate in research and demonstration projects designed to ascertain and eliminate the

causes of dependency and to rehabilitate recipients of public assistance and care or to demonstrate the utilization of research in the administration of public assistance and care.

2. Except where a specific appropriation has been made therefor, no such research or demonstration project requiring the expenditure of state funds shall be instituted without prior approval of the director of the budget.

3. The department may request the cooperation of any county or city social services district in connection with any such research or demonstration project sponsored or conducted by the department.

* 4. The commissioner shall seek any federal waiver or waivers from the United States department of agriculture that may be necessary to exclude income provided to an individual as part of their participation in a pilot program authorized under section one hundred thirty-one-a of this chapter for supplemental nutrition assistance program eligibility determination purposes.

* NB Repealed March 23, 2029

§ 36-b. Local flexibility incentive pilot program. 1. The department, in cooperation with the department of labor, is authorized to establish the local flexibility incentive pilot program to enable social services districts or groups of social services districts, at local option, to demonstrate innovations and efficiencies to aid public assistance recipients in attaining self-sufficiency.

2. Upon application of a social services district, the department, in cooperation with the department of labor, is authorized to approve funding for pilot programs subject to the approval of the director of the budget, separate from state aid that said social services district or social services districts would otherwise be eligible to receive, and to waive state regulations that would impede the successful completion of a project, provided that the demonstration project is consistent with applicable state and federal statutes and will not impair the general health or welfare of the people receiving services under such project or

others receiving services in the applying social services district. The department is authorized, in consultation with the department of labor where appropriate to impose appropriate alternative standards in place of any waived requirements.

3. Applications for pilot project approval shall include, but not be limited to, the name of the applying social services district or group of social services districts, the population, size of its welfare-related programs including medical assistance, family assistance, safety net assistance, emergency assistance to families or its successor programs; size of the population to be subject to the pilot project, the project proposed, with quantified cost savings and an explanation of how such project, if approved, would result in cost containment of the amounts described in the application or improvements in the delivery of services and benefits; the start date and completion date of the project; whether, if successful, the project would require funding in future years; and identification, as necessary, of any rules, regulations or statutory requirements that could impede the successful completion of the project.

4. If a project is approved, then, notwithstanding any inconsistent provision of law, the department shall provide funding of the project within amounts available by appropriation therefor, provided that no social services district or group of social services districts shall receive more than twenty-five percent of the funds available in any single year. No payment will be made until thirty days after the agreement has been executed. An approved applicant that shall achieve its cost-savings goal shall receive full reimbursement for the costs of such project as such amount shall have been approved by the department in cooperation with the department of labor. In no case shall the state or any of its agencies require remission or repayment of funds saved by any applicant. Reimbursement for successful applicants pursuant to the provisions of this section shall not take place until the department shall have been satisfied as to the savings levels actually achieved.

5. Each social services district or group of social services districts implementing a pilot project under this section shall

establish an on-going program evaluation and assessment program employing objective measurements and systematic analysis to determine the manner and extent to which the project is achieving the intended primary objective of the project. Each evaluation and assessment program shall include an annual performance plan with goals which establish target levels of performance expressed as tangible, measurable objectives against which actual achievement can be compared, including a goal expressed as a qualitative standard, value or rate. Each participating social services district or group of social services districts shall submit an annual program performance report for the prior fiscal year to the department, the department of labor and to the governor, the speaker of the assembly and the majority leader of the senate documenting the performance achieved compared with the performance goals established for the pilot project, improvements in the quality of services provided and any cost savings; an explanation if a performance goal was not met and an assessment of the effectiveness in achieving performance goals.

6. Notwithstanding any provision of law to the contrary, state reimbursement for expenditures made by a social services district for administration of any project, including expenditures made in connection with the development, if performed by a county employee or employees, implementation and operation thereof, shall not be subject to any limitations on administrative expenditures, ceilings or caps which otherwise would apply to the reimbursement of such administrative expenditures.

*** § 36-c. Savings plan for the city of New York.** 1. Notwithstanding any other provision of law to the contrary, in any social services district with a city having a population of five million or more, the social services district shall conduct a demonstration project as set forth in this section, and shall evaluate and report on such project annually, pursuant to a plan approved by the office of temporary and disability assistance and the division of budget. A comprehensive report shall be provided to the governor, the temporary president of the senate and the speaker of the assembly by December thirty-first, two thousand

twenty-one. Such report shall include but not be limited to information regarding the program such as the number of participants for the previous three years; the percentage of participation as measured by the number of participants making contributions into such savings plan; the average amount payable to a participant upon leaving the program; the average length of time a participant remained in the program; the number of situations in which the participant moved out of the program but reengaged in the program within the previous twelve months; the number of participants leaving the program voluntarily and the number of participants removed due to failure to comply; and any other demonstrated outcomes of such program.

2. Such social services district, in lieu of applying that portion of a temporary housing assistance recipient's earned income that, but for the provisions of this section, would be applied to reduce the need for the shelter component of temporary housing assistance provided in a temporary emergency shelter, shall direct such a recipient to participate in a savings plan with such funds and, as long as such funds are not withdrawn, they shall not be applied to reduce the need for the shelter component of the temporary housing assistance granted for the duration of his or her residence in temporary emergency shelter; provided, however, that the provisions of this section shall only apply to a person receiving temporary housing assistance in a shelter or other facility overseen by the New York city department of homeless services or the New York city department of housing preservation and development. Failure by a recipient of temporary housing assistance to contribute to such a savings plan shall result in the discontinuance of temporary housing assistance. Provided however, such discontinuance shall be immediately curable by compliance with this section.

3. In such social services district, any such funds collected from the earned income of a recipient of temporary housing assistance while he or she is residing in a temporary emergency shelter shall be deposited in a savings plan approved by the office of temporary and disability assistance and the division of budget; shall be payable to the recipient for the recipient's use to facilitate his or her transition to, or stabilize his or her residence in, permanent housing upon his or her

discharge from shelter or upon verification of such recipient's date of discharge from shelter; and shall be considered exempt as income or a resource until the twelfth month following the month in which the recipient ceases receiving temporary housing assistance in temporary emergency shelter. Funds collected in such savings plans shall be pooled, tracked individually, and maintained in a savings or money-market account at interest rates set by the institution with which such funds are deposited. Any savings and interest accrued in such account or accounts shall be distributed to a temporary housing assistance recipient upon his or her discharge from temporary emergency shelter or upon verification of such recipient's date of discharge from shelter, in accordance with the provisions of this section.

4. Such social services district shall be deemed in compliance with section one hundred thirty-one-a of this chapter for reimbursement of expenditures made for temporary housing assistance, provided the district is conducting the project fully in accordance with the provisions of this section. Unearned income of a recipient of temporary housing assistance in such social services district shall not be applied to the savings plan, and shall not be required to be applied to that portion of the shelter costs not paid for with public assistance. Temporary housing assistance recipients shall not be required to contribute to the cost of such shelter, as provided for in this section. Such project shall not be implemented so as to compromise the federal benefits of a recipient or any of his or her household members.

5. Upon the effective date of this subdivision, such social services district shall suspend implementation of the demonstration program, provided that (a) the recipient's need for the shelter component of temporary housing assistance shall not be reduced by the portion of a recipient's earned income that the recipient would have been required under subdivision two of this section to deposit in a savings plan, and (b) funds collected from recipients pursuant to this section prior to the effective date of this subdivision shall continue to be treated and made payable to recipients in accordance with the provisions of subdivision three of this section.

* NB Repealed March 31, 2030

§ 37. Reports of and to department. The department may collect and, so far as it shall deem advantageous, embody in its annual reports information relating to the best manner of dealing with those who require assistance from public funds, or who receive aid from private charity and represent its views as to the best methods of caring for dependent children and such other matters as the commissioner may deem advisable.

§ 38. Commission for the blind. The New York state commission for the blind shall continue to exercise and perform its duties, as prescribed by law, and the regulations of the office of children and family services subject to the supervision and control of the commissioner; and such commission shall be a bureau of the office of children and family services.

§ 39. Indian affairs. 1. Powers and duties, if any, conferred or imposed, in terms, by laws now in force, on the governor, commissioners of the land office and the superintendent of purchase or fiscal supervisor of state charities, so far only as they relate to affairs of Indians, or on the commissioner of education, so far only as they relate to affairs of Indians other than the education of children upon the Indian reservations, except such powers and duties, if any, as may have been conferred or imposed, in terms, on either of such officers, in relation to such affairs, by laws enacted and in effect since July first, nineteen hundred and twenty-four, shall continue to be exercised and performed by the department, instead of by the officers named.

2. The office of children and family services may enter into an agreement with an Indian tribe for the provision of foster care, preventive and adoptive services to Indian children as defined in subdivision thirty-six of section two of this chapter and for the provision of adult and child protective services to Indians residing upon the tribe's reservation in the state, after the Indian tribe has

submitted to the office of children and family services a plan that satisfactorily demonstrates that such tribe is able to meet the applicable standards for foster care services, preventive services, adoptive services, and adult and child protective services set forth in the applicable federal and state law and regulations. The office of children and family services is authorized to reimburse such tribe for the full cost of foster care, preventive services, adult and child protective services, and adoptive services and care, after deducting any federal funds properly received on account thereof.

3. Any Indian tribe designated as such by the Secretary of the Interior which became subject to the jurisdiction of courts of the state of New York pursuant to sections two hundred thirty-two and two hundred thirty-three of title twenty-five of the United States code or any other federal law, may reassume jurisdiction over those child custody proceedings provided for in articles three, seven, ten, and ten-A of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-b of this chapter involving Indian children provided that the Secretary of the Interior has granted approval pursuant to and in accordance with the applicable sections of title twenty-five of the United States code.

4. Any Indian tribe designated as such by the state of New York which is subject to the jurisdiction of the courts of the state of New York, may reassume jurisdiction over those child custody proceedings provided for in articles three, seven, ten, and ten-A of the family court act, and sections three hundred fifty-eight-a and three hundred eighty-four-b of this chapter involving Indian children provided that the local commissioner has granted approval in accordance with rules and regulations established by the department.

5. (a) An Indian tribe approved to assume jurisdiction shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the courts of the state of New York by existing federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive

jurisdiction, notwithstanding the residence or domicile of the child.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, nothing herein shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parents or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable state law in order to prevent imminent physical damage or harm to the child. The state authority, official or agency shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this section, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian as may be appropriate.

6. In any state court child custody proceeding involving the foster care placement of, or termination of parental rights to an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe; provided, however, that such transfer shall be subject to declination by the tribal court of such tribe.

7. In any state court proceeding involving the foster care placement of or the termination of parental rights to an Indian child, the Indian custodian of the child and the Indian tribe shall have a right to intervene at any point in the proceeding.

8. The department may enter into an agreement, contract or compact with an Indian tribe or intertribal consortium for the provision of welfare related services by social services districts or by any tribe or tribes in connection with a tribal plan for direct tribal funding and administration of federal temporary assistance to needy families block grant monies.

§ 40. Real property; purchase or acquisition. 1. The commissioner, when an appropriation therefor has been made by the legislature, may acquire any real property which he may deem necessary for any departmental purpose by purchase or, in the manner provided in the eminent domain procedure law. Title to any such real property shall be taken in the name of and be vested in the people of the state of New York; provided, however, that no real property shall be so acquired by purchase unless the title thereto shall be approved by the attorney general.

2. Whenever real property is to be acquired pursuant to the eminent domain procedure law, the commissioner shall cause to be made by the state department of transportation an accurate acquisition map as so provided in such law.

3. On the approval of such map by the commissioner, the original tracing of such map shall be filed in the main office of the department pursuant to the eminent domain procedure law.

4. If the commissioner shall determine, prior to the filing of such map in the office of the clerk or register of the county, that changes, alterations or modifications of such map as filed in the office of the department should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation by the department of transportation of an amended map. On the approval of such amended map by the commissioner, it shall be filed in the main office of the department and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

5. If the commissioner shall determine, prior to the filing of a copy of such acquisition map in the office of the county clerk or register as provided in paragraph three of subdivision (A) of section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she may file a certificate of withdrawal in the offices

of the department and of the department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled, and all rights thereunder shall cease and determine.

6. The commissioner shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the commissioner the names of the owners of the property, easements, interests or rights described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

7. If, at or after the vesting of title to such property in the people of the state of New York as provided for in the eminent domain procedure law, the commissioner shall deem it necessary to cause the removal of an owner or occupancy from any real property so acquired, he may cause such owner or occupant to be removed therefrom by proceeding in accordance with section four hundred five of the eminent domain procedure law. The proceeding shall be brought in the name of the commissioner as agent of the state and the attorney general shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the commissioner, but they shall be part of the costs of the acquisition of the real property and be paid in like manner. Proceedings may be brought separately against one or more of the owners or occupants of any such property, or one proceeding may be brought against all or several of the owners or occupants of any or all such property within the territorial jurisdiction of the same court, justice or judge; judgment shall be made for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

8. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the commissioner shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such acquisition of his or their property and the amounts so fixed shall be paid out of the

state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

9. Application for reimbursement of incidental expenses as provided in section seven hundred two of the eminent domain procedure law shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from monies appropriated for the acquisition of property under this section.

10. The commissioner, with the approval of the director of the budget, shall establish and may from time to time amend rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this section; of actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the commissioner; and actual reasonable expenses in searching for a replacement business or farm; or in hardship cases for the advance payment of such expenses and losses. For the purposes of making payment of such expenses and losses only the term "business" means any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of residential property may elect to accept a moving expense allowance,

plus a dislocation allowance, determined in accordance with a schedule prepared by the commissioner and made a part of such rules and regulations. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of commercial property who relocates or discontinues his business or farm operation may elect to accept a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no such fixed relocation payment shall be made unless the commissioner finds and determines that the business cannot be relocated without a substantial loss of its existing patronage, and that the business is not part of a commercial enterprise having at least one other establishment, which is not being acquired by the state or the United States, which is engaged in the same or similar business. In the case of a business which is to be discontinued but for which the findings and determinations set forth above cannot be made, the commissioner may prepare an estimate of what the actual reasonable and necessary moving expenses, exclusive of any storage charges, would be if the business were to be relocated and enter into an agreed settlement with the owner of such business for an amount not to exceed such estimate in lieu of such actual reasonable and necessary moving expenses. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. As used in this subdivision the term "commercial property" shall include property owned by an individual, family, partnership, corporation, association or a nonprofit organization and includes a farm operation. As used in this subdivision the term "business" means any lawful activity, except a farm operation, conducted primarily for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; for the sale of services to

the public; or by a nonprofit organization.

11. Authorization is hereby given to the commissioner to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by him. The commissioner, with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision. In the case of property acquired pursuant to this section which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such payment to such owner shall not exceed fifteen thousand dollars. Such payment shall be the amount, if any, which, when added to the acquisition payment equals the average price, established by the commissioner on a class, group or individual basis, required to obtain a comparable replacement dwelling that is decent, safe and sanitary to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling. Such payment shall include an amount which will compensate such displaced owner for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the

replacement dwelling is located. Any such mortgage interest differential payment shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section. Such payment shall include reasonable expenses incurred by such displaced owner for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling which is decent, safe and sanitary within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section or the date on which he receives from the state final payment of all costs of the acquired dwelling, whichever occurs later, except advance payment of such amount may be made in hardship cases. In the case of property acquired pursuant to this section from which an individual or family, not otherwise eligible to receive a payment pursuant to the above provisions of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such individual or family for not less than ninety days immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such individual or family shall not exceed four thousand dollars. Such payment shall be the amount which is necessary to enable such individual or family to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accessible to his place of employment, but shall not exceed four thousand dollars, or to make the down payment, including reasonable expenses incurred by such individual or family for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses, on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, but shall not exceed four thousand dollars, except if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down

payment. Such payments may be made in installments as determined by the commissioner. Application for payment under this subdivision shall be made to the commissioner upon forms prescribed by him and shall be accompanied by such information and evidence as the commissioner may require. Upon approval of such application, the commissioner shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

12. The owner of any real property so acquired may present to the court of claims, pursuant to subdivision (A) of section five hundred three of the eminent domain procedure law, a claim for the value of such property and for other legal damages as provided by law for the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property.

13. Expenses incurred in the acquisition of the property, including the cost of title searches, service and publication of notices, and expenses incurred in proceedings for the removal of owners or occupants, shall be deemed to be part of the cost of the acquisition of such real property and shall be paid accordingly out of any moneys appropriated for the acquisition of such property.

14. If the commissioner shall determine subsequent to the acquisition of a temporary easement in any real property that the purposes for which such easement right was acquired have been accomplished and that the exercise of such easement is no longer necessary, he shall make his certificate that the exercise of such easement is no longer necessary and that such easement right is therefore terminated, released and extinguished. The commissioner shall cause such certificate to be filed in the office of the department of state and upon such filing all rights acquired by the state in such property shall cease and determine. The commissioner shall cause a certified copy of such certificate as so

filed in the office of the department of state to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known or can be ascertained by a reasonable effort and such commissioner shall cause a further certified copy of such certificate to be filed in the office of the recording officer of each county in which the property affected or any part thereof is situated. On the filing of such certified copy of such certificate with such recording officer, it shall be his duty to record the same in his office in the books used for recording deeds and to index the same against the name of the people of the state of New York as grantor.

ARTICLE 2-A

SHELTER AND SUPPORTED HOUSING PROGRAMS

TITLE 1 HOMELESS HOUSING AND ASSISTANCE PROGRAM

2 SINGLE ROOM OCCUPANCY SUPPORT SERVICES PROGRAM

4 HOMELESSNESS INTERVENTION PROGRAM

TITLE I

HOMELESS HOUSING AND ASSISTANCE PROGRAM

Section 41. Legislative findings and purpose.

42. Definitions.

43. Homeless housing and assistance contracts.

44. General and administrative provisions.

§ 41. Legislative findings and purpose. The legislature hereby finds that large numbers of people in communities across our state are unable to secure housing for themselves and are living in the streets or in emergency shelters, despite current efforts by public and private agencies to provide adequate housing for those in need; that the present condition is contrary to the public interest and threatens the health, safety, welfare, comfort and security of the people of the state; that communities across the state must each do their share to assist the homeless; and that the public interest requires that state financial

assistance be provided to construct or rehabilitate housing units for the homeless in communities throughout New York state and to explore alternative means of meeting their long-term housing needs, consistent with the fiscal constraints faced by New York state. The legislature, therefore, finds that a special fund should be established, to fund capital programs sponsored by not-for-profit corporations, charitable organizations, wholly owned subsidiaries of not-for-profit corporations or of charitable organizations, public corporations and municipalities that will expand and improve the supply of shelter and other housing arrangements for homeless persons.

§ 42. Definitions. As used in this article, the following terms shall have the following meanings unless the context clearly requires otherwise:

1. "Homeless project" shall mean a specific facility, including lands, buildings and improvements acquired, constructed, renovated or rehabilitated and operated by a not-for-profit corporation, charitable organization, wholly owned subsidiary of a not-for-profit corporation or of a charitable organization, public corporation or a municipality to increase the availability of housing for homeless persons, which may include other non-housing services such as but not limited to dining, recreational, sanitary, social, medical and mental health services as may be deemed by the commissioner to be essential to such a project.

2. "Homeless person" shall mean an undomiciled person who is unable to secure permanent and stable housing without special assistance, as determined by the commissioner.

3. "Project cost" shall mean the cost of any or all undertakings necessary for planning, financing, land acquisition, demolition, construction, rehabilitation, equipment and site development.

4. "Not-for-profit corporation" and "charitable organization" shall mean entities established pursuant to the not-for-profit corporation law or otherwise established pursuant to law.

5. "Public corporation" shall mean a municipal corporation, a district corporation, or a public benefit corporation.

§ 43. Homeless housing and assistance contracts. 1. Within the limits of funds available in the homeless housing and assistance fund, the commissioner is hereby authorized to enter into contracts with municipalities to provide state financial assistance for the project costs attributable to the establishment of homeless housing projects. The municipalities that enter into contracts with the commissioner shall undertake the establishment of the homeless housing project or shall contract with a not-for-profit corporation or charitable organization to undertake the project, pursuant to this article.

2. Subject to the approval of the director of the budget, the commissioner is hereby authorized to enter into contracts with not-for-profit corporations or subsidiaries thereof, public corporations or charitable organizations or subsidiaries thereof to provide state financial assistance for the project costs attributable to the establishment of homeless projects.

3. The state financial assistance shall be in the form of grants, loans or loan guarantees, as the commissioner may determine provided, however, that financial assistance to a for-profit subsidiary of a not-for-profit corporation or of a charitable organization must be in the form of a loan or loan guarantee. Any loan to a for-profit subsidiary shall be repaid under such terms as will protect the financial viability of the project. Subject to the approval of the division of the budget, the commissioner may contract with other state agencies, public benefit corporation's or private institutions to administer a loan or loan guarantee program pursuant to regulations to be promulgated by the commissioner.

4. The commissioner shall require that, in order to receive funds pursuant to this article, the municipality, not-for-profit corporation or subsidiary thereof, public corporation or charitable organization or

subsidiary thereof must submit an operating plan. Such plan shall include:

(a) the manner in which the operating expenses of the project shall be met;

(b) the services that will be provided to homeless persons, including procedures for intake, referral and outreach;

(c) the responsibilities of the municipality and social services district for the operation of the project;

(d) the specific population that will be served by the project and how the project will address the population's special needs;

(e) the category of facility proposed to be established; and

(f) evidence demonstrating that such project complies or will comply with existing local, state and federal laws and regulations.

5. The commissioner may use up to one percent of the appropriation for any fiscal year to pay for technical assistance in support of project development and operation. Technical assistance may include assistance with general project development and operation, support services development, architecture and engineering, legal services and financial services and may be provided by individuals and not-for-profit or business corporations. The providers of technical assistance shall be chosen by the department based on such information as the department shall require in a request for proposals or in any other competitive process which satisfies the provisions of the state finance law.

6. Prior to entering into a contract for the establishment and operation of a homeless project pursuant to this section, the commissioner shall determine that the not-for-profit corporation or subsidiary thereof, public corporation or charitable organization or subsidiary thereof that proposes to undertake the homeless project is a bona fide organization which shall have demonstrated by its past and current activities that it has the ability to maintain, manage or operate homeless projects, that the organization is financially responsible, that the proposed project is financially viable and that the project plan has been determined to be appropriate for the needs of the homeless in the relevant community.

7. Every contract entered into for the establishment and operation of a homeless project pursuant to this article shall contain a provision that in the event the property which is the subject of such contract ceases to be used as a homeless project during a seven-year period commencing with the date of the commissioner's written approval of occupancy of the homeless project, or such longer period of time as may be established in the contract, or in case of any other substantial violation, the commissioner may terminate the contract and may require the repayment of any moneys previously advanced to the municipality, not-for-profit corporation or subsidiary thereof, public corporation or charitable organization or subsidiary thereof pursuant to the terms of such contract. Where the municipality has entered into a contract with a not-for-profit corporation or subsidiary thereof, public corporation or charitable organization or subsidiary thereof, the commissioner may, pursuant to this subdivision, require that the municipality terminate the contract with such corporation. Any money repaid pursuant to this subdivision shall be returned to the homeless housing and assistance fund.

8. Each contract entered into for the establishment and operation of a homeless project pursuant to this article shall be subject to the approval of the director of the budget and shall provide for payment to the municipality, not-for-profit corporation or subsidiary thereof, public corporation or charitable organization or subsidiary thereof for the project costs related to the homeless project to be established by it, pursuant to a payment schedule. The full amount of the contract, or any appropriate portion thereof, as determined by the commissioner and subject to the approval of the director of the budget, shall be available for payment at any time on or after the effective date of the contract.

9. Notwithstanding any other provision of this article, the commissioner may, subject to the approval of the director of the budget, enter into contracts to provide financial assistance for other than project costs where such financial assistance can be demonstrated to be necessary; provided, however, that no more than twenty-five per centum of the total amount appropriated for the purposes of this article in any

fiscal year shall be allocated in contracts for other than project costs. In determining whether financial assistance for other than project costs is necessary, the commissioner shall consider the proposed project's plan for meeting operating expenses, the efforts made by the contracting organizations to secure alternative sources of funding for other than project costs, and such other factors as the commissioner shall deem appropriate.

10. Notwithstanding any other provision of this article, the state shall not, in the exercise of its responsibilities pursuant to this article, assume the legal title to projects developed pursuant to this article.

11. The municipality, not-for-profit corporation or subsidiary thereof, public corporation or charitable organization or subsidiary thereof seeking financial assistance pursuant to this article shall, within thirty days of its application for such assistance, notify the local planning board, as defined by section twenty-seven of the general city law, section two hundred seventy-one of the town law, section 7-718 of the village law, or section eighty-four of the charter of the city of New York, appropriate for the geographic area in which the proposed homeless project would be located, and shall provide such board with information regarding the proposed homeless project.

§ 44. General and administrative provisions. 1. The department, in consultation with the division of housing and community renewal, the office of mental health and other appropriate agencies, shall issue and promulgate rules and regulations for the administration of this article. The rules and regulations shall provide that state financial assistance pursuant to this article will not be available unless an application has been filed by the municipality, not-for-profit corporation or subsidiary thereof, public corporation or charitable organization or subsidiary thereof with the department pursuant to a request for proposals issued by the commissioner. The rules and regulations shall include provisions concerning eligibility of municipalities and contracting not-for-profit corporations or subsidiaries thereof, public corporations and charitable

organizations or subsidiaries thereof for state financial assistance; the form of the applications for contracts; funding criteria and the funding determination process; the form of the contracts; supervision and evaluation of the contracting municipalities or corporations; reporting, budgeting and record-keeping requirements; provisions for modification, termination, extension and renewal of contracts; and such other matters not inconsistent with the purposes and provisions of this article as the commissioner shall deem necessary, proper or appropriate.

2. The commissioner may provide that preference be given to contract applications that (a) involve other sources of funds (municipal, federal or any source other than the state), in-kind contributions made by such sources, or involve projects receiving state financial assistance pursuant to chapters three hundred thirty-eight, three hundred thirty-nine and five hundred forty-nine of the laws of nineteen hundred eighty-two, in order to maximize the effect of state financial assistance or (b) involve innovative and cost-effective homeless projects that may help resolve the long-term problems of the homeless or (c) involve the rehabilitation of existing structures.

3. The commissioner shall, in consultation with the commissioner of housing and community renewal, the commissioner of mental health and the commissioners of other appropriate agencies, evaluate the need for homeless projects in various areas of the state and among various populations, including, but not limited to, homeless men, women, families and runaway youth, and shall allocate funds, to the extent practicable, to meet these needs; provided, however, that no more than fifty per centum of the total amount appropriated pursuant to this article in any fiscal year shall be allocated to contracts with any single municipality.

4. The department shall provide for the review, at periodic intervals, of the performance of the municipalities, not-for-profit corporations or subsidiaries thereof, public corporations and charitable organizations or subsidiaries thereof receiving financial assistance pursuant to this article. Such review shall, among other things, be for the purposes of ascertaining conformity to contractual provisions, the financial

integrity and efficiency of the organizations and the evaluation of the project. Contracts entered into pursuant to this article may be terminated by the commissioner upon a finding of substantial nonperformance or other breach by the organization of its obligations under its contract with the municipality.

5. The commissioner shall require that all homeless projects that received financial assistance pursuant to this article shall comply with all regulations applicable to projects of this type promulgated by the department, by the division of housing and community renewal and other municipal, state and federal regulations and laws. The commissioner may terminate any contract upon a finding that a substantial violation of such regulations or laws has remained uncorrected for a substantial period of time.

6. In order to further the purposes of this article, social services districts shall, in accordance with regulations promulgated by the department, undertake such efforts as may be necessary and practicable to assist homeless persons apply for and obtain appropriate governmental assistance.

7. On or before February first, nineteen hundred eighty-four and on or before February first of each year thereafter in which contracts under this section are in force, the commissioner shall submit to the governor, the temporary president of the senate and the speaker of the assembly a report detailing progress and evaluating results, to date, of the program.

8. Notwithstanding the provisions of any general or special law, the director of the budget is authorized to transfer to the homeless housing and assistance account funds otherwise appropriated or reappropriated to the department of social services for the fiscal years beginning on and after April one, nineteen hundred ninety, in an amount or amounts the director of the budget determines to be necessary to carry out the provisions of the homeless housing and assistance program.

TITLE 2

SINGLE ROOM OCCUPANCY SUPPORT SERVICES PROGRAM

Section 45. Definitions.

- 45-a. Single room occupancy support services program.
- 45-b. Notice of funding availability; contracts.
- 45-c. Direct application by eligible applicants.
- 45-d. Operating plans.
- 45-e. Reimbursement.
- 45-f. Administration.
- 45-g. Annual report.

§ 45. Definitions. As used in this title, the following terms shall have the following meanings unless the context clearly requires otherwise:

1. "Eligible cost" shall mean the cost to deliver one or more services to eligible residents to assist such residents to live independently, including information and referral, resident services coordination, crisis intervention, and other like services. Eligible cost shall not include: those costs associated with maintenance and operation of physical plant; those costs associated with support services or maintenance provided or financially assisted by other state or municipal programs; or those costs associated with support services provided in residential care programs licensed by a state department or agency. When two or more eligible projects exist in the same geographic area, services shall be provided in common among such projects whenever feasible.

2. "Eligible applicant" shall mean a not-for-profit corporation or charitable organization which operates single room occupancy units qualifying as an eligible project.

3. "Eligible resident" shall mean a person residing in a single room occupancy unit who is in need of services to live independently. In the event that the income of such resident exceeds one hundred fifty percent of the poverty level, the eligible project may charge a service fee to

the eligible resident not to exceed fifty percent of the total cost of services provided pursuant to this title in such project divided by the number of eligible residents in the project.

4. "Eligible project" shall mean those single room occupancy units occupied by eligible residents, within a building or portion thereof which is operated by an eligible applicant.

5. "Single room occupancy unit" shall mean a private room providing living and sleeping space for no more than two persons with access to bathing and toilet facilities, within a building or portion thereof which is operated by an eligible applicant; provided, however, that in no event shall such unit be located in:

- (a) hotels, motels or other dwellings occupied transiently;
- (b) shelters for families or adults, as defined by the commissioner;
- (c) residential facilities or institutions which are required to be licensed by any state agency;
- (d) college or school dormitories;
- (e) clubhouses;
- (f) housing intended for use primarily or exclusively by the employees of a single company or institution; or
- (g) convents or monasteries.

The unit itself may contain a kitchen and/or a bathroom.

6. "In-kind expenditures" shall mean the cash value of eligible costs that are not reimbursed under this title and may include but not be limited to materials, equipment, space or paid or volunteer staff.

§ 45-a. Single room occupancy support services program. There is hereby established under the administration of the commissioner a single room occupancy support services program, to provide financial assistance, subject to limitations stated in appropriations therefor, in the form of grants, to eligible applicants for eligible costs of services to assist eligible residents of single room occupancy units to live independently. The commissioner, subject to the approval of the

director of the budget and within amounts appropriated therefor, shall request proposals from local social services districts for funds to support grants made pursuant to this title. Copies of such requests for proposals shall be simultaneously distributed to eligible applicants known to the commissioner and the availability of such proposals shall be publicized by the department. Local social services districts will be chosen competitively based upon such proposals for funding. Criteria to be used by the commissioner in awarding funding among local social services districts shall include but not be limited to the anticipated need for single room occupancy units within each district; the ability of the local social services district to properly supervise the single room occupancy support services program; and the appropriateness of the support services for the population to be served.

§ 45-b. Notice of funding availability; contracts. A local social services district that receives funding pursuant to this title shall issue notices of funding availability together with application forms for financial assistance under this title, provided that such notices, application forms and competitive award procedures are approved in advance by the department. When such applications are approved, the local social services official is authorized to enter into contracts with eligible applicants to provide financial assistance in the form of grants for eligible costs.

§ 45-c. Direct application by eligible applicants. Upon receipt of a copy of the request for proposals issued pursuant to section forty-five-a of this title, an eligible applicant may notify the local social services district in which its eligible project is located of its desire to participate in the single room occupancy support services program. In the event that the local social services district does not submit a proposal pursuant to section forty-five-a of this title, such eligible applicant that has notified the local social services district of its desire to participate may submit an application directly to the commissioner for financial assistance under this title. Criteria to be used by the commissioner in awarding funding directly to such eligible

applicants shall include but not be limited to the anticipated need for single room occupancy units within the district where the eligible project is located, and the appropriateness of the support services for the population to be served. Before directly awarding any funding to eligible applicants, the commissioner shall consult with the local social services district where the eligible project is located regarding the need for single room occupancy units within such district, the ability of the eligible project to provide single room occupancy services and any other factors which are necessary to effectively evaluate direct application by eligible projects. When such applications are approved, the commissioner, within the amounts appropriated under this title, and subject to the limitations set forth in this section and section forty-five-d of this title, is authorized to enter into contracts with eligible applicants, to provide financial assistance in the form of grants for eligible costs.

§ 45-d. Operating plans. 1. Contracts with not-for-profit corporations and charitable organizations shall be approved by the social services district, or the commissioner in the case of direct applications, in accordance with an operational plan submitted pursuant to the provisions of subdivision two of this section.

2. The social services district, or the commissioner in the case of direct applications, shall require that, in order to receive funds pursuant to this title, the not-for-profit corporation or charitable organization must submit an operating plan. Preference shall be given to plans which demonstrate that existing state, federal, local and private dollars will be utilized to the fullest extent possible to fund the service costs of the project. Such plans shall include but not be limited to:

(a) the manner in which the capital expenses of the project shall be met;

(b) the services that will be provided to the residents of the project;

(c) the specific population that will be served by the project and how the project will address the population's special needs;

(d) a description of the manner in which coordination with other federal, state, local and private funding sources shall be achieved;

(e) the cost per month per eligible resident of the services to be provided; and

(f) evidence demonstrating that such project complies or will comply with existing local, state and federal laws and regulations.

3. Prior to entering into a contract pursuant to this title, the social services district, or the commissioner in the case of direct applications, shall determine that the not-for-profit corporation or charitable organization submitting such plan is a bona fide organization which shall have demonstrated by its past and current activities that it has the ability to maintain, manage or operate such project, that the organization is financially responsible, that the proposed project is financially viable and that the project has been determined to be appropriate for the needs of the homeless in the relevant community.

§ 45-e. Reimbursement. Expenditures made by a social services district for grants made pursuant to this title shall be reimbursed by the state at the rate of fifty per centum, after first deducting therefrom any federal funds properly received or to be received on account thereof; provided, however, that in lieu of local financial participation required by this section, the commissioner may permit a social services district to substitute actual or in-kind expenditures incurred by eligible applicants in the operation of eligible projects if the commissioner determines that:

(a) local social services district financial participation is unavailable in all or a portion of such expenditures although such district financial participation in the single room occupancy support services program equals or exceeds such financial participation in the previous program year; and

(b) such eligible projects require financial assistance under this title to ensure the financial viability of supportive services programs.

Actual or in-kind expenditures made by an eligible applicant receiving assistance pursuant to section forty-five-c of this title shall be

reimbursed by the state at the rate of fifty per centum after first deducting therefrom any federal funds properly received or to be received on account thereof.

§ 45-f. Administration. 1. The commissioner shall promulgate rules and regulations for the administration of this title. Such rules and regulations shall include but not be limited to provisions concerning eligibility of not-for-profit corporations and charitable organizations for single room occupancy support project assistance, funding criteria and the funding determination process, supervision and evaluation of the contracting corporations and organizations and any other matters consistent with the purposes of this title.

2. The social services district, or the commissioner in the case of direct applications, shall provide for the review, at periodic intervals, of the performance of the not-for-profit corporations and charitable organizations receiving financial assistance pursuant to this title. Such review shall, among other things, be for the purpose of ascertaining conformity to contractual provisions, the financial integrity and efficiency of the organizations and the evaluation of the project. Contracts entered into pursuant to this title may be terminated by the social services district, or the commissioner in the case of direct applications, upon a finding of substantial nonperformance or other breach by the corporation or organization of its obligations under its contract.

3. In order to further the purposes of this article, social services districts shall, in accordance with regulations promulgated by the department, undertake such efforts as may be necessary and practicable to assist eligible residents to apply for and obtain appropriate governmental assistance.

4. The department, subject to the approval of the director of the budget, may retain up to five percent of the total amount appropriated pursuant to this title in any fiscal year for administrative purposes.

§ 45-g. Annual report. Beginning October first, nineteen hundred eighty-eight, and each year thereafter, the commissioner shall report to the governor and legislature on the success of the single room occupancy support services program in assisting eligible residents to live independently.

TITLE 4

HOMELESSNESS INTERVENTION PROGRAM

Section 48. Legislative intent.

49. Definitions.

50. Homelessness intervention contracts.

51. Regulations.

52. Reports.

§ 48. Legislative intent. The legislature finds that there are a significant number of homeless and at-risk households living in temporary and unstable conditions which would benefit from the provision of a comprehensive assistance program. The legislature further finds that the current system of providing services to such households would be improved by ensuring that a broad range of flexible, individualized assistance is available to stabilize households and to better meet divergent local needs. The legislature, therefore, finds that state financial assistance should be made available for the purpose of providing supportive services designed to stabilize households by attempting to avoid homelessness and, for those who are currently homeless, by facilitating the transition from homelessness to permanent housing.

§ 49. Definitions. For the purposes of this title, the following terms shall have the following meanings:

1. "Homeless" shall mean an undomiciled household which is unable to secure permanent and habitable housing without special assistance, as

determined by the commissioner, including but not limited to households temporarily residing in emergency shelters, transitional facilities, hotels/motels, or substandard conditions.

2. "Household" shall mean a single individual or family, including couples without dependent children who, or which, are eligible to receive public assistance.

3. "Eligible applicant" shall mean local social services districts or not-for-profit corporations serving homeless and at-risk households.

4. "At-risk" shall mean a household threatened with homelessness and those with a history of frequent moves.

5. "Homelessness intervention services" shall mean services which are designed to stabilize at-risk and homeless households by avoiding homelessness or assisting households to secure permanent and habitable housing. Such services may include, but need not be limited to the following:

(a) services to resolve conflicts between landlords and tenants and to facilitate fair and workable solutions;

(b) legal services to households threatened with the loss of their homes through eviction, harassment or other means;

(c) tenant activities to educate households in the areas of tenant rights and responsibilities, and to organize tenants to remedy housing problems such as code violations, landlord abandonment and harassment;

(d) benefits/entitlements advocacy to ensure that households are receiving all federal, state and local benefits to which they are entitled, such as temporary assistance to needy families, safety net assistance, food stamps, supplemental security income, rent security deposits, furniture and household moving expenses;

(e) relocation assistance which provides for the identification of and referral to permanent and habitable housing, transportation services, landlord/tenant lease negotiation services and assistance in establishing utility services; and

(f) the provision of or referral to support services designed to stabilize households in permanent and habitable housing including

services related to substance abuse, domestic violence, housekeeping, budgeting, education, day care, employment, parenting, mental health, physical health, and such other services deemed necessary by the office of temporary and disability assistance. Service provided to homeless households pursuant to this paragraph must be provided for a period of at least six months beginning the first day of the month following the month in which such household secured permanent housing.

§ 50. Homeless intervention contracts. 1. The commissioner shall, within the amounts appropriated therefor, select through a competitive request-for-proposal process, local social services districts and not-for-profit corporations serving homeless and at-risk households to provide homelessness intervention services to homeless and at-risk households. In order to ensure that contracts are awarded and services provided in geographic areas of the state to homeless and at risk households in greatest need, and to maximize the effect of state funds, the commissioner shall, prior to entering into a contract with an eligible applicant pursuant to this section, consider the extent to which existing homelessness intervention services are available in the local social services district and the extent to which these services should be expanded.

2. The commissioner shall require eligible applicants to submit operating plans in order to receive funding pursuant to this article. Such plans shall include:

(a) a description of the homeless intervention services to be provided, including procedures for intake, referral, outreach, the provision of services, follow-up and anticipated outcomes;

(b) the specific population that will be served and how the services provided will address the population's special needs;

(c) a description of the manner in which coordination with other federal, state, local and privately funded services will be achieved; and

(d) a description of how the services will be designed to assist households transition from a reliance on outside interventions and move toward housing stability and economic self reliance.

3. Prior to entering into a contract pursuant to this section, the commissioner shall determine that the eligible applicant is a bona fide organization which shall have demonstrated by its past and current activities that it has the ability to provide such services, that the organization is financially responsible and that the operating plan is appropriate for the needs of households to be served.

§ 51. Regulations. The office of temporary and disability assistance shall, in consultation with other agencies deemed appropriate by the commissioner, promulgate such rules and regulations as are necessary to carry out the provisions of this article.

§ 52. Reports. On or before February first, nineteen hundred eighty-nine and on or before February first of each year thereafter in which contracts under this article are in force, the commissioner shall submit to the governor, the temporary president of the senate and the speaker of the assembly a report detailing progress and evaluating results, to date, of the program. Such report shall include, but not be limited to a review of the basis for selection of eligible applicants; the number of persons served; a review of the efforts made to prevent homelessness and to provide permanent housing for homeless households, including a list of the number of persons and families, by project, who received services; an identification of the estimated savings and costs of the program to the state and localities; and an evaluation of continuing needs for homelessness intervention services.

ARTICLE 3

LOCAL PUBLIC WELFARE ORGANIZATION; POWERS AND DUTIES

- Title 1. Application (Secs. 56-58).
2. Public welfare districts and their responsibility for public assistance and care (Secs. 61-64).
 3. County public welfare districts (Secs. 65-73).
 - 3-A. Integration of local public welfare administration (Secs.

74-74-i).

4. City public welfare districts (Secs. 77-79).
5. Records, reports, funds and appropriations (Secs. 80-97).
6. Powers to enforce support (Secs. 101-111).
- 6-A. Establishment of paternity and enforcement of support (Secs. 111-a--111-k).
- 6-B. Services for enforcement of support provided by the department of social services (Secs. 111-m--111-z).
7. Local personnel training; research and demonstration projects; special state reimbursement. (Secs. 112-115).
- 7-B. Chief executive officers of local welfare departments: appointment. (Sec. 116).

TITLE 1

APPLICATION

Section 56. City social services districts.

57. Cities in county social services districts.

58. Application.

§ 56. City social services districts. The city of New York shall have all the powers and duties of a social services district insofar as consistent with the provisions of the special and local laws relating to such city. The officers thereof charged with the administration of public assistance and care shall have additional powers and duties of a commissioner of social services not inconsistent with the laws relating to said city.

§ 57. Cities in county social services districts. Each city, other than the city of New York, shall form part of the county social services district of the county in which it is situated and shall not assume any powers and responsibilities for the administration or expense of public assistance and care, in addition to those specified in subdivision two of section sixty-nine, except pursuant to the provisions of sections seventy-four and seventy-four-a of this chapter.

§ 58. Application. Nothing in this chapter shall be deemed to take away the jurisdiction or any power or duty of the family court, the department, the state department of education or the state department of health.

TITLE 2

PUBLIC WELFARE DISTRICTS AND THEIR RESPONSIBILITY FOR PUBLIC ASSISTANCE AND CARE

Section 61. Social services districts.

62. Responsibility for public assistance and care.

64. Separation of social services from eligibility and assistance payments functions.

§ 61. Social services districts. For the purpose of administration of public assistance and care the state shall be divided into county and city social services districts as follows:

1. The city of New York is hereby constituted a city social services district.

2. Each of the counties of the state not included in subdivision one of this section is hereby constituted a county social services district.

§ 62. Responsibility for public assistance and care. 1. Subject to reimbursement in the cases hereinafter provided for, each public welfare district shall be responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself.

5. This section is subject to the following exceptions:

(a) Notwithstanding any other provisions of this chapter, in the event a recipient removes from one to another social services district in the

state, a social services official administering safety net assistance or family assistance to such recipient shall continue such assistance for such recipient for a period ending on the last day of the calendar month next succeeding the calendar month in which such removal occurred, provided such recipient is otherwise eligible for such assistance and has not become a recipient of public assistance in the district to which he or she has removed.

(a-1) Notwithstanding any other provisions of this chapter, in the event a recipient removes from one to another social services district in the state, a social services official administering medical assistance to such recipient shall continue such assistance for a period ending on the last day of the calendar month next succeeding the calendar month in which such removal is reported by the recipient to the social services district, provided that the recipient: has informed the district of his or her new address and any material changes in circumstances affecting medical assistance eligibility; is otherwise eligible for medical assistance; and has not become a recipient of medical assistance in the district to which he or she has removed. After the last day of the calendar month next succeeding the calendar month in which such removal is reported, the recipient shall be eligible without further application for medical assistance administered by the social services district to which the recipient has removed. Continued provision of medical assistance under this paragraph is dependent on the recipient meeting all applicable requirements of titles eleven and eleven-D of article five of this chapter. This paragraph shall not apply to a recipient who is institutionalized in a medical facility and who removes from one social services district to another district in the state.

(b) If a public welfare district, town or city provides care for a person in a family home, boarding home, nursing home, convalescent home, hospital or institution outside of its territory and pays for such care directly or through a grant made to the recipient, the public welfare district, town or city making such provision shall continue to be responsible for payment for such care as long as the recipient is in need thereof. In the event any other type of public assistance and care is needed by a person receiving such care, it shall be furnished and paid for by the public welfare district, town or city which would be

responsible for such required assistance and care if such person had remained in the territory of the district, town or city making such provision; the public welfare district, town or city making such provision shall likewise be responsible for the care, removal and burial of the body of any such person who shall die, and the expense thereof.

The public welfare district, town or city which, pursuant to the provisions of this paragraph, is providing public assistance and care for the mother of an infant, on the date of birth of such infant, shall be responsible for providing public assistance or care required by such infant on and after the date of his birth; and such public welfare district, town or city shall be deemed to have made provision for the care of such infant outside of its territory.

When a child who has been cared for away from his own home by or on behalf of a public welfare district, pursuant to title two of article six or other provisions of this chapter, the family court act of the state of New York, or other provisions of law, is discharged, pursuant to law, to his parents or parent, brother, sister, uncle, aunt or legal guardian, who are or is then residing outside the territory of such public welfare district, such discharge shall terminate the responsibility of such public welfare district to furnish public assistance and care for such child pursuant to this paragraph; and upon such discharge it shall become the responsibility of the public welfare district wherein such child is thereafter to reside with his relative or legal guardian to provide necessary public assistance and care for him as in the case of any other child residing therein.

The provisions of this paragraph shall not be deemed to authorize or empower towns or cities of a county public welfare district to exercise responsibilities with relation to public assistance and care inconsistent with the responsibilities imposed or conferred on them by other provisions of this chapter.

(c) When a person with a mental illness or developmental disability is in need of public assistance or care while on convalescent status or community status from a state hospital or institution under the provisions of section 29.15 of the mental hygiene law, the public

welfare district, town or city from which he was admitted to such hospital or institution shall be responsible for providing and paying for such assistance or care as in the case of other persons requiring public assistance and care, except that such responsibility shall continue during any period such person is on convalescent status or community status outside the territory of such public welfare district, town or city and shall continue thereafter in accordance with the provisions of this paragraph and paragraph (b) of this subdivision if such person was receiving or should have been receiving public assistance or care from such public welfare district, town or city outside its territory at the time he was discharged from such convalescent status or community status.

(d) When a person, either upon admission to a hospital, nursing home, intermediate care facility, adult home, enriched housing program or residence for adults located in a social services district other than the district in which he was then residing, or while in such hospital, nursing home, intermediate care facility, adult home, enriched housing program or residence for adults, is or becomes in need of medical assistance, the social services district from which he was admitted to such hospital, nursing home, intermediate care facility, adult home, enriched housing program or residence for adults shall be responsible for providing such medical assistance for so long as such person is eligible therefor. If while such person is receiving care in such hospital, nursing home, intermediate care facility, adult home, enriched housing program or residence for adults or when discharged therefrom, is in need of any other type of public assistance or care, the social services district, town or city from which the person was admitted to such hospital, nursing home, intermediate care facility, adult home, enriched housing program or residence for adults shall be responsible for providing and paying for such public assistance or care as in the case of other persons requiring public assistance and care in its territory, and such responsibility shall continue thereafter in accordance with the provisions of this paragraph and paragraph (b) of this subdivision if such person was receiving or should have been receiving public assistance or care from such social services district, town or city; such social services district, town or city shall likewise be responsible for the care, removal or burial of the body of any such

person who shall die, and for the expense thereof. The provisions of this paragraph shall likewise be applicable to the care of an eligible person who, while temporarily absent from the social services district in which he then resided, was admitted to a hospital or nursing home in another social services district prior to the effective date hereof.

(e) A public welfare district which provides medical assistance for needy persons pursuant to the provisions of title eleven of article five of this chapter, shall not charge back any part of the cost of such assistance to another public welfare district.

(f) (1) The social services district in which a victim of domestic violence, as defined in article six-A of this chapter, was residing at the time of the alleged domestic violence shall be responsible, in accordance with section one hundred thirty-one-u of this chapter, for the cost of emergency shelter and care provided to such victim and his or her minor children at a residential program for victims of domestic violence, as defined in article six-A of this chapter, whether or not such program is located in the social services district or in another social services district if such victim:

a. was receiving public assistance at the time of entry to the program or

b. applies for public assistance and care during the time the victim was residing in such program.

(2) The social services district to which such application is submitted shall forward the completed application to the district in which the victim resided at the time of the alleged domestic violence.

(3) Responsibility for the cost of shelter and care pursuant to this paragraph shall be limited to the period during which the victim and his or her children, if any, reside in such program. Responsibility for public assistance and care for any period after termination of such residency shall be determined pursuant to other provisions of this section.

(g) (1) When a person applies for medical parole, and is in need of public assistance, including medical assistance, the department of corrections and community supervision shall cause an application for such assistance to be forwarded to the department of social services.

(2) Upon receipt of an application for public assistance, including medical assistance, forwarded by the department of corrections and community supervision for persons meeting the conditions of medical parole, financial eligibility for such assistance and care shall be determined by the New York state department of social services prior to the person's parole.

(3) Determination of continuing eligibility for public assistance, including medical assistance, and care will be the responsibility of the social services district into which such person is released.

(4) Any inconsistent provision of this chapter or other law notwithstanding, when a person is released on medical parole pursuant to section two hundred fifty-nine-r or two hundred fifty-nine-s of the executive law and is in need of public assistance, including medical assistance, the social services district in which such person was convicted and from which he or she was committed to the custody of the department of corrections and community supervision shall be responsible for the administrative costs of the initial and any subsequent eligibility determination and the costs of any public assistance, including medical assistance, following such persons release on medical parole for so long as such person is eligible therefor.

6. Homeless children. (a) Notwithstanding any other provision of law to the contrary, the social services district which provides assistance or services to a homeless child in temporary housing located outside the school district of origin shall notify the commissioner of education, the school district of origin and the school district designated by the child, parent or person in parental relation pursuant to subdivision two of section thirty-two hundred nine of the education law within five days of such designation as the school district which such child shall attend upon instruction. Such notice shall include the name of the child, the name of the parent or person in parental relation to the child, if any, the name and location of the temporary housing arrangement, the name of the school district of origin and any other information required by the commissioner of education.

(b) For the purposes of this subdivision the terms "homeless child", and "school district of origin" shall be as defined in section thirty-two hundred nine of the education law.

(c) A social services district shall provide for the transportation of each homeless child who is eligible for benefits pursuant to section three hundred fifty-j of this chapter to and from a temporary housing location in which the child was placed by the social services district and the school attended by such child pursuant to section thirty-two hundred nine of the education law, if such temporary housing facility is located outside of the designated school district pursuant to paragraph a of subdivision two of section thirty-two hundred nine of the education law. A social services district shall be authorized to contract with a board of education or a board of cooperative educational services for the provision of such transportation. This paragraph shall apply to placements made by a social services district without regard to whether a payment is made by the district to the operator of the temporary housing facility.

7. The provisions of subdivision five of this section shall not apply with respect to the medical assistance eligibility of persons described in subparagraph two of paragraph (a) of subdivision one of section three hundred sixty-six of this chapter.

§ 64. Separation of social services from eligibility and assistance payments functions. Notwithstanding any provision of law, rule or regulation every social services district shall be organized to effect a separation of social services from eligibility and assistance payments functions as follows:

1. The commissioner shall issue within ten days of the effective date hereof, guidelines to the social services districts of the state outlining the principles and purposes to be attained in the separation of social services from the functions of eligibility and assistance payments, and defining the content of services which may be included under the term "social services" and of the functions associated with eligibility and assistance payments.

2. Each social services district shall submit to the commissioner by July first, nineteen hundred seventy-one, its own plan for separation,

together with its timetable for implementation of the plan.

3. Upon finding that the plan conforms to the applicable minimum federal requirements, the commissioner shall approve such plan.

4. Each social services district shall submit to the commissioner, in accordance with applicable federal law and regulations, modifications of its approved plan for separation of social services from eligibility and assistance payments functions. Each social services district shall prepare, in accordance with applicable federal law and regulations, for the effective operation of such approved plan as so modified.

TITLE 3

COUNTY PUBLIC WELFARE DISTRICTS

Section 65. County commissioners of public welfare.

66. County appointments and bonds.

67. Town public welfare officers; appointment of staff.

69. Responsibility for public assistance and care in a county social services district.

71. Commitments.

72. Power of the board of supervisors to assume responsibility for assistance and care.

73. Power of the board of supervisors to change the administrative system of the county social services district.

§ 65. County commissioners of public welfare. 1. There shall be a county commissioner of public welfare in each county public welfare district who shall administer the public assistance and care for which the county public welfare district is responsible and shall have general supervision and care of persons in need in the territory over which he has jurisdiction.

2. The county commissioner shall be responsible for the administration of all the assistance and care for which the county is responsible.

3. The county commissioner shall act as the agent of the department in all matters relating to assistance and care administered or authorized by the town public welfare officers.

4. The county commissioner shall be appointed in accordance with the provisions of section one hundred sixteen of this chapter or other provisions of law relating to the appointment of such commissioner.

6. (a) A county commissioner is authorized and required to provide safety net assistance for persons residing or found in a city or town of the county when in his judgment they are eligible for and in immediate need of such assistance and either: the city or town public welfare officer, as the case may be, is absent from his city or town under circumstances indicating his absence may extend beyond two days and such officer has no deputy or assistant authorized to grant such assistance or his or her deputy or assistant is also absent from such city or town under circumstances indicating his or her absence may also be for a period of more than two days; or, such county commissioner shall have appealed to the department, pursuant to section seventy-four-h, the decision of the social services official of such city or town not to grant the safety net assistance recommended by such commissioner after his or her staff shall have investigated the application for assistance pursuant to the provisions of section one hundred thirty-two. Such county commissioner may continue to grant safety net assistance in the former case until the city or town public welfare officer or his or her deputy or assistant returns to such city or town, and in the latter case until the department shall have decided the appeal of the county commissioner.

(b) Expenditures of a county for safety net assistance pursuant to this section may be made from county social services funds appropriated or otherwise made available therefor and shall be subject to reimbursement by the state in accordance with and to the extent authorized by section one hundred fifty-three; and the local share of such expenditures shall become a charge on, and shall be reimbursed to the county by the city or town which was otherwise responsible for furnishing the safety net assistance for which the expenditure was made,

provided the county commissioner shall give appropriate written notice thereof to the appropriate city or town public welfare officer within thirty days of the date the expenditure was made by the county and provided further that in the case of an appeal to the department that such appeal shall be decided in favor of the county.

7. (a) In the event of a vacancy in the office of county commissioner of social services the appointing authority may, subject to the provisions of paragraph (b) of this subdivision, appoint as acting commissioner of social services any employee of the county social services agency. Such appointment shall be for no longer than one year.

(b) Prior to filling a vacancy in the office of county commissioner of social services the appointing authority shall certify to the state commissioner of social services: (i) that there is an unavailability of qualified candidates; (ii) that the district is making continued efforts to recruit qualified candidates; (iii) that the appointment shall be effective only until a qualified person becomes available; and (iv) that a waiver by the appointing authority of any specific qualification required by section one hundred sixteen of this chapter shall not be effective without the consent of the state commissioner of social services.

(c) The acting commissioner may be paid compensation in addition to his normal salary during the period of time that he serves as acting commissioner.

(d) The acting commissioner shall have the same power as a commissioner during the period of time that he serves as acting commissioner.

(e) Service as an acting commissioner shall in no way affect the permanent civil service status, or any other employment rights of the appointee.

8. Notwithstanding any other law, rule, or regulation to the contrary, each county commissioner of social services is hereby authorized and directed to ensure that their social services district allows individuals submitting an application or other paperwork relating to public assistance and care to do so electronically.

§ 66. County appointments and bonds. 1. The legislative body of the county may authorize the appointment of any number of deputy commissioners of social services, physicians to care for sick persons in their homes, other assistants and employees, including attorneys to perform duties it considers necessary to carry out the provisions of this chapter. However, such legislative body may also authorize that such attorneys, in addition to performing the duties assigned to them by the county commissioner, may be deputized by the county attorney to perform duties on his behalf in connection with the work of the social services department.

2. The county commissioner shall appoint deputy commissioners, physicians, assistants and employees so authorized and direct their work.

3. Each county commissioner and deputy commissioner shall be required to give bond before entering upon his duties. The board of supervisors shall fix the amount of such bond and may require and fix the amount of bond to be given by any other assistant or employee whose appointment is authorized. The expense of any bond required in connection with the work of a county public welfare official or employee shall be paid from county public welfare funds.

4. In accordance with federal and state regulations each county social services commissioner shall appoint a citizens advisory committee or committees to exercise and perform such functions, powers, and duties as the regulations of the department may require.

§ 67. Town public welfare officers; appointment of staff. 1. The town board of each town responsible for the expense of providing safety net assistance for persons residing or found in such town shall appoint a social services official or authorize a supervisor of the town to act as such official. It may in its discretion appoint an assistant town social services official and other employees to assist the town social services official in carrying out his or her duties. The town social

services official, his or her assistant and other employees shall hold office during the pleasure of the town board. The town board shall fix the salary to be paid a town social services official, his or her assistant or other employees or fix the amount per hour to be paid them when they are performing any duty connected with their office.

2. The town public welfare officer shall be responsible for the authorization of the assistance and care for which the town is responsible and shall assist the county commissioner in the administration of assistance and care to persons residing or found in his town for whose care the county public welfare district is responsible. Except as otherwise agreed and arranged by and between the county commissioner and the town public welfare officer, the town public welfare officer shall receive all applications for public assistance and care made in his town by residents of such town, and he shall forward each such application to the county commissioner immediately after the receipt of the same. He shall have all the powers and perform all the duties of a public welfare official applicable to the work hereby assigned.

3. In case of emergency and until it is possible for the county commissioner either to take charge of the case or to make a complete investigation, the town public welfare officer may grant such temporary assistance and care as may be necessary. All such grants made by the town public welfare officer shall be made in accordance with the rules and regulations of the department and the regulations established by the county commissioner of public welfare.

§ 69. Responsibility for public assistance and care in a county social services district. The responsibility for the administration of public assistance and care in a county social services district and the expense thereof may either be borne by the county social services district or be divided between such district and the towns and cities therein as hereinafter provided.

1. Unless otherwise determined by the board of supervisors as

hereinafter provided, each town shall be responsible for the expense of providing safety net assistance for persons residing or found in such town.

2. Unless otherwise determined by the board of supervisors as hereinafter provided, a city forming a part of a county social services district shall be responsible for the expense of providing safety net assistance for any person residing or found in its territory.

3. A county social services district shall be responsible for the expense of providing all assistance and care for persons residing or found in a town or city in its territory for which such town or city is not responsible under the provisions of subdivisions one and two of this section. The expense of such assistance and care granted by a county social services district shall be subject to reimbursement by the state in the cases provided for by section sixty-two or by any other provision of this chapter.

§ 71. Commitments. Commitments to a county home may be made by such town and city public welfare officers as are authorized by the county commissioner. All other commitments to hospitals or other institutions at the expense of the county public welfare district shall be made by the county commissioner, or by such other official as may be authorized pursuant to the provisions of this chapter.

§ 72. Power of the board of supervisors to assume responsibility for assistance and care. 1. The board of supervisors of the county may, by resolution adopted by a majority vote, direct that the cost of all or any part of the assistance and care for which the towns and cities are made responsible under the provisions of subdivisions one and two of section sixty-nine shall be a charge on the county social services district and administered under the direction of the county commissioner.

2. Copies of any such resolution shall be sent to each town clerk and

to the mayor and clerk of each city in the county social services district within ten days after the adoption of the resolution. However, no resolution adopted by the board of supervisors pursuant to subdivision one of this section shall take effect in a city in the county social services district until confirmed by the legislative body of the city.

§ 73. Power of the board of supervisors to change the administrative system of the county social services district. When pursuant to section seventy-two, the board of supervisors has adopted a resolution directing that the cost of all public assistance and care shall be a charge on the county social services district:

1. The county social services district shall, after the date fixed by such resolution, be responsible for administration of public assistance and care in all of the towns of its district and thereafter all provisions of this chapter as to the powers and duties of towns and of town social services officers shall be inoperative in such county social services district. The appointment of all town social services officers and employees shall terminate on the date when such resolution takes effect.

2. (a) Such resolution shall not take effect in a city in a county social services district unless it is confirmed by act of the legislative body of the city in accordance with the provisions of this paragraph. The legislative body of such a city may confirm the resolution of the board of supervisors (1) on or before the first day of October in the year in which such resolution was adopted by the board of supervisors, and make such confirmation effective on the first day of January next succeeding such confirmation, provided the resolution of the board of supervisors takes effect in the towns of the county on or before such first day of January, or (2) at any other time or date, and make such confirmation effective on any date not earlier than the date the resolution of the board of supervisors takes effect in the towns of the county, provided the board of supervisors shall by resolution specifically approve such confirmation.

(b) On the day after a city confirms a resolution of the board of supervisors pursuant to paragraph (a), the mayor or the city clerk shall send a written notice of such confirmation to the clerk of the board of supervisors of the county. He shall also send a copy of such notice to the county commissioner of social services and the county commissioner shall thereupon notify the department.

(c) If a city in the county social services district shall confirm the resolution of the board of supervisors in accordance with the provisions of paragraph (a), the county social services district shall, on and after the effective date of such confirmation be responsible for administration of public assistance and care in such city, and thereafter all provisions of this chapter as to the powers and duties of a city in a county social services district and of city social services officers shall be inoperative in such city.

(d) Unless and until a city in the county social services district shall confirm the resolution of the board of supervisors in accordance with the provisions of paragraph (a), the responsibility of such city for assistance and care in its territory shall not be affected by such resolution, and the city shall be governed by the provisions of this chapter and other laws relating to cities which form part of a county social services district and to city social services officers; and the city shall continue to be responsible for the cost of public assistance and care under the provisions of subdivision two of section sixty-nine, except as otherwise provided in title three-a of this article. The cost of any assistance and care given to local charges residing or found in such city, paid by the county social services district under the provisions of subdivision three of section sixty-nine, shall be a charge on the county social services district.

3. The board of supervisors shall make such additional appropriations and authorize the appointment of such number of deputy commissioners, other assistants and employees as it may deem necessary to provide adequate administration of the public assistance and care for which the county social services district is made responsible under the provisions of this section.

TITLE 3-A

INTEGRATION OF LOCAL PUBLIC WELFARE ADMINISTRATION

Section 74. Administration of assistance by or on behalf of certain cities.

74-a. Administration of assistance by county for city; reimbursements and advances; cost to county to be raised by tax on taxable property of city and to be included in county tax levy.

74-h. Appeals and reviews.

74-i. Transfer of personnel; county, city and town.

§ 74. Administration of assistance by or on behalf of certain cities.

1. Each city, other than the city of New York, which is responsible for one or more types of public assistance and care on the date this section becomes effective shall function under section seventy-four-a of this chapter.

2. Any city subject to the provisions of subdivision one of this section may confirm and make effective therein, pursuant to subdivision two of section seventy-three of this chapter, a resolution of the county legislative body adopted pursuant to section seventy-two of this chapter directing that the cost of all public assistance and care shall be a charge on the county social services district.

§ 74-a. Administration of assistance by county for city; reimbursements and advances; cost to county to be raised by tax on taxable property of city and to be included in county tax levy. 1. The county shall administer in and for the city the public assistance and care for the administration of which the city is responsible and shall be entitled to all reimbursements and advances against reimbursements on account of the assistance and care so administered to which the city would otherwise be entitled and which would otherwise be payable to the city in accordance with the provisions of this chapter.

2. The cost to the county of all assistance and care thus

administered by the county in and for the city shall be a charge against and be levied as a tax upon the taxable property of the city and the amount to be so raised by tax shall be included by the county in its next ensuing tax levy.

3. This section is applicable only to those cities described in subdivision one of section seventy-four of this chapter.

§ 74-h. Appeals and reviews. 1. A social services official responsible in an individual case for either the authorization of assistance or the investigation of the application for assistance and the making of a recommendation relative to such application shall have the right to appeal to the department from a decision made in such case by another social services official.

Upon receiving such an appeal, the department shall issue a written determination which shall be binding on all the social services officials involved in such appeal.

2. The department on its own motion may review any case for the purpose of determining whether assistance and care has been adequately or properly provided. After making such a review, the department may issue such written determination as it may deem proper, and such determination shall be binding on all the social services officials concerned.

§ 74-i. Transfer of personnel; county, city and town. 1. When, pursuant to the provisions of this chapter or of any other law, the functions, powers and duties exercised by a city or town in the administration of public assistance and care, are transferred or assigned, in whole or in part, to a county, provision shall be made for the county to employ so much of the staff employed by such city or town in the administration and execution of the functions, powers and duties so transferred or assigned as may be practicable and necessary. Officers and employees shall be transferred without further examination

or qualification and they shall retain their respective civil service classification and status provided that, in determining the officers and employees to be transferred to a county, such officers and employees shall be selected within each grade of each class of positions in the order of their original appointment in the service of the city or town, as the case may be. Officers and employees in the competitive class of the civil service of the city or town who are not transferred to the county shall have their names entered upon appropriate city or town preferred lists, as the case may be, pursuant to section thirty-one of the civil service law. Temporary and provisional employees may be transferred and shall, thereafter, be subject to such examinations as are required by law. If the functions transferred are retransferred in accordance with the provisions of this chapter, upon such retransfer, the officers or employees who were transferred and who are employed by the county on the date of such retransfer shall likewise be retransferred; and, thereafter, they shall be deemed officers and employees of the city or town from which they were originally transferred, and they shall retain their civil service status, rights and privileges.

2. When, pursuant to the provisions of this chapter, the functions, powers and duties exercised by a county in the administration of public assistance and care are transferred or assigned, in whole or in part, to a city, or are assumed in part by a city or town which elects, pursuant to this chapter or any other law, to constitute itself a public welfare district, provision shall be made for the city or town to employ so much of the staff employed by such county in the administration and execution of the functions, powers and duties so transferred, assigned or assumed as may be practicable and necessary. Officers and employees shall be transferred without further examination or qualification and they shall retain their respective civil service classification and status provided that, in determining the officers and employees to be transferred to the city or town, such officers and employees shall be selected within each grade of each class of positions in the order of their original appointment in the service of the county. Officers and employees in the competitive class of the civil service of the county who are not transferred to the city or town shall have their names entered upon

appropriate county preferred lists, pursuant to section thirty-one of the civil service law. Temporary and provisional employees may be transferred and shall, thereafter, be subject to such examinations as are required by law. If the functions transferred are retransferred in accordance with the provisions of this chapter, upon such retransfer, the officers and employees who are transferred and who are employed by the city on the date of such retransfer shall likewise be retransferred; and, thereafter, they shall be deemed officers and employees of the county, and they shall retain their civil service status, rights and privileges.

TITLE 4

CITY PUBLIC WELFARE DISTRICTS

Section 77. City commissioners of public welfare; appointment of staff.

78. Citizens advisory committees.

79. Plan for the homeless.

§ 77. City commissioners of public welfare; appointment of staff. 1. There shall be a city commissioner of public welfare in each city public welfare district, who shall administer the public assistance and care for which the city public welfare district is responsible.

2. The officer appointed, in accordance with section one hundred sixteen of this chapter, to administer public assistance and care in a city which is constituted a city public welfare district, shall have the powers and perform the duties of the city commissioner of public welfare.

3. When the duties of a city commissioner are by the provisions of special or local law relating to the city assigned to more than one department of the city government, the administrative officer of each such department shall have such of the powers and perform such of the duties of a city commissioner as may be applicable to the work assigned to such department, and all the provisions of this chapter shall be so interpreted.

4. The city commissioner of public welfare shall appoint deputy commissioners, assistants and employees authorized by the legislative body of the city and shall direct their work. When authorized by such legislative body such city commissioner may appoint attorneys to perform duties other than those assigned to the corporation counsel or city attorney. However, if such city commissioner shall approve and if authorized by such legislative body, such attorneys may, in addition to performing the duties assigned to them by such city commissioner, be deputized by the corporation counsel or city attorney to perform duties on his behalf in connection with the work of the welfare department. The city commissioner shall appoint physicians to visit sick persons in their homes when authorized by the legislative body of such city.

§ 78. Citizens advisory committees. In accordance with federal and state regulations, each city social services commissioner shall appoint a citizens advisory committee or committees to exercise and perform such functions, powers and duties as the regulations of the department may require.

§ 79. Plan for the homeless. The mayor of New York city shall submit to the legislature and the governor a copy of the revised and updated five-year plan for housing the homeless in New York city which is required under section 21-121 of the administrative code of the city of New York, no later than February fourteenth of each year.

TITLE 5

RECORDS, REPORTS, FUNDS AND APPROPRIATIONS

- Section 80. Records.
81. Reports.
82. Accounts.
83. County social services funds.
84. County commissioner's revolving fund.
85. Monthly reports of county commissioner to county

treasurer.

- 86. Town public welfare funds.
- 86-a. City public welfare funds.
- 87. Special funds.
- 88. Responsibility for adequate appropriations.
- 89. Estimates in county public welfare districts.
- 90. Appropriations in county public welfare districts.
- 90-a. Taxes for county public welfare districts.
- 91. Estimates and appropriations in city public welfare districts.
- 92. Deficiency appropriations.
- 93. Provisions for financing home relief.
- 94. Federal donated commodities.
- 95. Supplemental nutrition assistance program (SNAP).
- 95-a. State supplemental nutrition assistance program outreach program.
- 96. Use of subprofessional staff.
- 97. Low-income home energy assistance program.

§ 80. Records. All social services officials shall keep the records required by this chapter and the department.

§ 81. Reports. 1. The county commissioner shall make: (a) Such reports and furnish such information to the department with respect to the work of the county social services district as is required by this chapter and the department.

(b) An annual report to the board of supervisors concerning the work of the county social services district and additional reports at such times and covering such facts as the board of supervisors may require.

(c) If any of the cost of assistance and care paid for by the county social services district is charged back to the towns and cities thereof, a report to the county treasurer at the end of the fiscal year, stating the per capita maintenance cost per day in the county home and an itemized statement of the amount to be charged each town and city for the assistance and care given either in the county home or elsewhere to

persons residing or found in each town or city and a statement of all expenditures and receipts in behalf of such persons.

(d) Current reports to the city and town social services officers of persons residing in their cities and towns who are in receipt of public assistance and care from the county.

2. A town social services officer shall make:

(a) An annual report to the town board concerning his work and additional reports at such times and covering such facts as the town board may require.

(b) An annual report to the county commissioner and any additional reports at such time and covering such facts as may be required by the county commissioner or the department.

3. A city commissioner of social services shall make:

(a) Such reports to the department with respect to his work as are required by this chapter and the department.

(b) An annual report to the mayor of the city or to any other official or board authorized to receive such report and additional reports at such times and covering such facts as may be required.

4. Such annual reports shall include an itemized statement of all money received by the social services official and all money expended by him, and a detailed statement in regard to the recipients of public assistance and care. Town and city social services officers shall furnish the county commissioner with all data, relating to their work and persons in receipt of public assistance and care, necessary to enable the county commissioner to make the reports required by the department.

§ 82. Accounts. All social services officials shall keep such accounts regarding the receipt and disbursements of the social services funds, and of any trust funds, as may be required by law or directed by the department.

§ 83. County social services funds. 1. The county treasurer shall be the treasurer of the county social services district.

2. Except as hereinafter provided, disbursements for administration and public assistance and care from county social services funds shall be made only on warrants drawn by the county commissioner for the payment of bills and claims, in accordance with the provisions of law relating to such county and after audit by such county commissioner, except that in counties having a county comptroller or a county auditor such claims shall be audited by the county comptroller or county auditor after approval by the county commissioner.

3. Payments for board and incidental expenses of children cared for in boarding homes or in the homes of relatives or in institutions maintained by an authorized agency provided under title two of article six or on order of the family court of the county, may be made upon schedules showing the names of the persons or institutions with whom such children are boarded, the names of children boarded with each of them, the monthly rate of board to be paid for each such child, the period covered by each such schedule, the amount due for the board of each child during such period, an itemized account of the amount allowed for incidentals, if any, in the case of each child, and the total amount due to each such person or institution, verified by the commissioner and audited as hereinbefore provided and without the presentation of verified bills or claims by such persons or institutions.

§ 84. County commissioner's revolving fund. A board of supervisors may authorize the county treasurer to furnish the county commissioner with an emergency revolving fund. Moneys from this fund shall be used only where it would be a hardship on the applicant or recipient to wait for the issuance of a grant in accordance with regularly established disbursement procedures. Reimbursement of expenditures from this fund shall be made at least monthly upon the presentation of itemized statements or vouchers chargeable to the appropriate programs of assistance in accordance with established procedures.

§ 85. Monthly reports of county commissioner to county treasurer.

The county commissioner shall pay over to the county treasurer on or before the tenth day of each month all money received by him in connection with the work of his public welfare district and make a report giving the source of all such receipts during the preceding calendar month.

§ 86. Town public welfare funds. 1. The taxes levied for public assistance and care in a town shall be paid to the town supervisor, who, without prior audit, shall disburse them on written order of the town public welfare officer for the payment of bills and claims submitted in accordance with the provisions of law relating to such town. All such bills and claims shall be filed annually with the town clerk.

2. The town supervisor shall, without prior audit, issue individual checks to persons as authorized by the town welfare officer on forms as either prescribed or approved by the state department of social welfare, or such supervisor shall pay over to the town welfare officer for use as a revolving fund such amount as the town board authorizes. When a revolving fund has been established, the town welfare officer shall, furnish to the town a bond in such penal sum and with such sureties as the town board may approve, conditioned upon the faithful discharge of his duties. Whenever a revolving fund has been established the welfare officer shall pay all welfare claims for which the town is legally responsible excepting salaries and other compensations from such revolving fund. Upon receiving such revolving fund the town welfare officer shall deposit such sum of money received in an official bank account, in the bank or trust company designated for such purpose by the town board, and he shall also enter in a suitable book or books kept by him for that purpose a record of the receipts and payments of such revolving fund. From appropriations for town welfare purposes the town supervisor shall, each month, on presentation by the town welfare officer of bills and claims, submitted in accordance with the provisions of law relating to such town, and statements of other disbursements on forms as either prescribed or approved by the state department of social

welfare, reimburse such revolving fund for the amount of disbursements therefrom during the preceding month.

§ 86-a. City public welfare funds. The taxes levied for public assistance and care in a city, or in a city public welfare district, shall be paid to the city treasurer, or the commissioner of finance in the city of New York, and disbursed in accordance with the provisions of law relating to such city for the payment of bills and claims, provided such provisions of law are not inconsistent with the provisions of this chapter.

§ 87. Special funds. 1. When a county commissioner shall receive any money as guardian of a minor or to be used for some particular person or purpose, he shall deposit it with the county treasurer, who shall keep such money in a special account to be drawn on by the county commissioner for the person or purpose designated.

2. When a town social services officer shall receive such money he shall deposit it in a bank approved by the town supervisor to be drawn on by the town social services officer and the town supervisor jointly for the person or purpose designated.

3. When a city commissioner of social services shall receive such money, he shall deposit it with the official having charge of the funds of such city, who shall keep it either in a separate account to be requisitioned by the city commissioner or in one or more common trust funds established and maintained pursuant to the charter of such city.

§ 88. Responsibility for adequate appropriations. It shall be the duty of the board of supervisors of a county, the town board of a town and the appropriating body of a city to make adequate appropriations and to take such action as may be necessary to provide the public assistance and care required by this chapter.

§ 89. Estimates in county public welfare districts. 1. The county commissioner shall submit annually, in the manner prescribed by and on or before the date fixed by or pursuant to law, an itemized estimate of revenues and the amount of money needed for the ensuing fiscal year for the public assistance and care for which the county is responsible, and for the administration thereof.

2. A town social services officer shall prepare and file annually with the town budget officer and the county commissioner of social services, at the time specified in section one hundred four of the town law, an itemized estimate of the amount needed for the ensuing year for administration and for public assistance and care. The town board shall include the amount necessary to be raised by tax in the annual estimate submitted to the board of supervisors as provided by the town law.

3. (a) A city public welfare officer shall submit an itemized estimate of the amount needed for the ensuing year for administration and public assistance and care to the mayor or other authority provided by law and to the county commissioner of public welfare.

(b) When, pursuant to the provisions of title three-a of this article, the county commissioner is administering the public assistance and care for which a city is responsible, and there is no city public welfare officer, the county commissioner shall make and submit an estimate for the city in the place and stead of a city public welfare officer.

§ 90. Appropriations in county public welfare districts. 1. (a) The board of supervisors shall appoint a committee of its members to consider the estimates presented by the town boards in the county public welfare district. If any town shall fail to submit an estimate as provided by the previous section, the county commissioner shall prepare and submit to such committee an estimate of the amount needed for administration and public assistance and care in such town. The committee shall recommend to the board of supervisors the amount it considers necessary for the ensuing fiscal year for the various forms of public assistance and care and administrative expenses in each of the

towns in the county public welfare district.

(b) The board of supervisors shall approve an estimate for each town in the county public welfare district and shall levy taxes in each such town for the amount of the approved estimate for such town.

2. The legislative body of a city forming part of a county public welfare district shall appropriate the amount it considers necessary for administration and public assistance and care in such city and shall cause taxes to be levied for the amount of such appropriation.

Nothing contained in this section shall be construed to prevent the financing of any such expenditure, in whole or in part, pursuant to the local finance law.

3. The board of supervisors shall appropriate, in the manner provided by law, the amount it considers necessary for the ensuing fiscal year for the various forms of public assistance and care and administrative expenses in the county public welfare district and shall cause the necessary taxes to be levied therefor in the territory of the county public welfare district.

§ 90-a. Taxes for county public welfare districts. Taxes for each form of assistance or care administered by the county public welfare district shall be levied only in the territory in which the county public welfare district is responsible for the administration of such form thereof.

§ 91. Estimates and appropriations in city public welfare districts. The city commissioner of public welfare shall present to the mayor or other authority provided by law in such city an itemized estimate of the amount of money needed for the ensuing year for the administration of the city public welfare district and for public assistance and care. The legislative body of the city public welfare district shall appropriate the amount necessary for such purpose and shall cause taxes to be levied for the amount of such appropriation.

Nothing contained in this section shall be construed to prevent the financing of any such expenditure, in whole or in part, pursuant to the local finance law.

§ 92. Deficiency appropriations. 1. (a) Should the sums appropriated for medical assistance for needy persons, family assistance, or care and protection of children pursuant to article six of this chapter and their administration be expended or contracted or become exhausted during the year for the purposes for which they were appropriated, or should no appropriation have been made, additional sums shall be appropriated by the proper appropriating bodies, as occasion demands, to carry out the provisions of this chapter.

(b) In cities such additional sums if appropriated shall be paid from unexpended balances not required by law to be expended for a specific purpose, or from contingent funds when such exist.

(c) In counties, such additional appropriations shall be paid from funds in the county treasury available therefor, provided that such funds were raised by taxes levied in a territory identical with that in which such sums may be expended, and then only to the extent of any excess thereof not needed for other purposes under other provisions of this chapter.

(d) Nothing contained in this section, however, shall be construed to prevent the financing of such deficiency appropriations pursuant to the local finance law.

2. All the provisions of subdivision one in regard to cities shall be applicable to towns in Dutchess county, and, in every city or town thereof, except in the city of Poughkeepsie, the amount of such additional sums must first be approved by the county commissioner of public welfare by writing filed with the city or town clerk.

§ 93. Provisions for financing home relief. 1. Definitions. When used in this section:

(a) Home relief means home relief as defined in section one hundred

fifty-seven and also includes all administrative expenses of home relief.

(b) Local share of home relief means the total cost or estimated cost of home relief after deducting the amount or the estimated amount of state aid received or to be received therefor under the then existing law and rules.

(d) City means any city responsible for the administration of home relief.

2. Estimates and appropriations. Each county, city and town shall make an annual estimate and appropriation of the total amount required for the fiscal year for home relief in accordance with this article. Such estimates shall show not only the total amount so required, but the estimated state aid to be received, and the estimated local share of home relief.

3. Additional appropriations to supply deficiencies in the annual appropriations. Should the sum or the aggregate of the sums appropriated or amounts available and authorized to be expended in any county, city or town be less than the amount required in any year for home relief, supplemental appropriations may be made from time to time, and in that case not less than the same percentage of the local share of home relief included in such supplemental appropriations may be raised by taxes levied for the next fiscal year as would have been raised by taxes for the current fiscal year if the amount of supplemental appropriation had been contained in the annual appropriation for the current fiscal year.

6. County taxes. County taxes for the payment of obligations and interest thereon, issued for home relief shall be a charge upon the entire county but shall be levied in the first instance against all the taxable property in the territory in which the county public welfare district is responsible for the administration of such home relief.

8. Notwithstanding any inconsistent provision of this section, until the commencement of the fiscal year in any county, city or town next following December first, nineteen hundred forty-six, the local share of

the cost of home relief in any year, in lieu of being raised by tax, may be paid from any other funds available, provided, however, no monies shall be borrowed to pay the cost of home relief.

§ 94. Federal donated commodities. 1. (a) Until his social services district has been included in the food stamp distribution program or programs under section ninety-five, each commissioner of social services is authorized and required, in accordance with regulations of the department, to assist needy families and individuals of his social services district to obtain federal donated commodities for their use, by certifying, when such is the case, that they are eligible to receive such commodities, and by distributing such commodities to eligible families and individuals. However, only those who are receiving or are eligible for public assistance or care and such others as may qualify in accordance with federal requirements and standards promulgated by the department shall be certified as eligible to receive such commodities.

(b) Each commissioner of social services shall develop and submit to the department for its approval a plan describing his district's operations under this section, which plan shall accord with federal and state requirements.

2. Federal donated commodities shall not be deemed or construed to be public assistance and care or a substitute, in whole or in part, therefor; and the receipt of such commodities by eligible families and individuals shall not subject them, their legally responsible relatives, their property or their estates to any demand, claim or liability on account thereof.

3. A person's need or eligibility for public assistance or care shall not be affected by his receipt of federal donated commodities.

4. Any inconsistent provisions of law notwithstanding, expenditures made by social services districts for the purpose of certifying eligibility of needy families and individuals for federal donated commodities and for distributing such commodities to them shall be deemed to be expenditures for the administration of public assistance

and care and shall be subject to reimbursement by the state in accordance with the provisions of section one hundred fifty-three to the extent of one hundred percentum thereof.

§ 95. Supplemental nutrition assistance program (SNAP). 1. (a) The office is authorized to submit any plan required by the federal government to participate in the supplemental nutrition assistance program (SNAP) to the secretary of the United States department of agriculture for approval, and to act for the state in any negotiations relative to the submission and approval of such plan, and may make such arrangements and take such action, not inconsistent with law, as may be required to obtain and retain such approval, to implement such plan, and to secure for the state the benefits available.

(b) The office is authorized to accept a designation, in accordance with the provisions of section twenty-nine of this chapter, under any other federal law which may make SNAP benefits available for needy families and individuals, and to perform such functions as may be appropriate, permitted or required by or pursuant to such law.

2. The office is empowered, with the consent and approval of the governor, to delegate or assign to any other office or agency of the state the performance of such function or functions under the plan or designation as may be appropriate and permitted or required by the appropriate federal law or regulations. Any state department or agency is hereby empowered and required to perform the function or functions so delegated or assigned to it.

3. (a) Each commissioner of social services is authorized and required, in accordance with regulations of the office, to make application for inclusion of his or her social services district in the federal supplemental nutrition assistance program plan or plans and to assist needy families and individuals of his or her social services district to obtain nutritionally adequate diets through participation in such federal plan or plans. However, only those persons who qualify for SNAP benefits in accordance with federal and state requirements, and standards promulgated by the office, shall be certified as eligible to

receive such benefits.

(b) Each commissioner of social services is authorized and required, subject to state and federal requirements therefor, to act on behalf of the office and receive, store, and issue SNAP benefits, either directly, or with the approval of the office, through a banking institution and/or other appropriate public or private agency.

(c) Each commissioner of social services shall develop and submit to the office for its approval a plan describing his or her district's operations under this section, which plan shall accord with federal and state requirements.

4. A person's need or eligibility for public assistance and care shall not be affected by his or her receipt of SNAP benefits.

5. Any inconsistent provision of law notwithstanding, the value of any SNAP benefits provided an eligible person shall not be considered income or resources for any purpose, including taxation.

6. (a) Any inconsistent provision of law notwithstanding, expenditures made by a social services district for the purpose of certifying eligibility of needy families and individuals, including those who are not in receipt of public assistance and care, for SNAP benefits, and for distributing and redeeming such benefits shall be deemed to be expenditures for the administration of public assistance and care, and shall be subject to reimbursement by the state in accordance with the provisions of section one hundred fifty-three of this chapter to the extent of one hundred percent in accordance with paragraph (b) of this subdivision.

(b) Such expenditures for supplemental nutrition assistance program administrative costs shall be subject to reimbursement by the state in accordance with regulations to be promulgated by the office, which regulations shall be subject to the approval of the director of the budget, shall be consistent with federal law and regulations, and shall be based on:

(i) an allocation of administrative costs attributable to both SNAP benefits and safety net assistance to permit maximum use of federal funds; and

(ii) an allocation of administrative costs attributable to both SNAP benefits and temporary assistance for needy families such that only those administrative costs that cannot be allocated to temporary assistance for needy families are allocated to supplemental nutrition assistance program, provided, however, that if federal law, regulations, or cost allocation procedures require those administrative costs that may be allocated to be allocated between temporary assistance for needy families and SNAP benefits, then the administrative costs so allocated to SNAP benefits shall be reimbursed as costs of public assistance and care in accordance with the provisions of paragraphs a and d of subdivision one of section one hundred fifty-three of this chapter.

7. a. When an eligible recipient under this section is issued an authorization to participate in the supplemental nutrition assistance program by written or electronic means, such authorization to participate:

(i) May be redeemed for SNAP benefits at designated redemption centers by the recipient or by an authorized representative. When an eligible recipient under this section is issued SNAP benefits, such SNAP benefits may be used to purchase food items from a food distributor by the recipient or by an authorized representative. Any other transfer or sale of authorizations to participate or SNAP benefits shall constitute an unauthorized use of said authorizations or benefits;

(ii) Shall require the office of temporary and disability assistance to provide the state education department a dataset which contains a listing of students ages three to eighteen who receive federal assistance through the supplemental nutrition assistance program (SNAP) and temporary assistance to needy families (TANF).

(iii) The state education department shall make such dataset available to all schools (public and nonpublic) that participate in: the National School Lunch, School Breakfast, Summer Food Service, or Special Milk programs with a free milk option of the availability of such dataset.

(iv) All schools identified in subparagraph (iii) of this paragraph shall access such dataset outlined in subparagraph (ii) of this paragraph at least three times a year and identify such child as eligible for free meals/milk and such child may receive free meals/milk without further application. Upon identification, such school shall

notify the student's parent or guardian of such eligibility. Such notification shall also contain an opportunity to decline the receipt of free meals/milk. In the event a school receives notification to decline the free meals/milk benefit the child shall be removed from the free eligibility list in such program.

(b) For the purposes of this subdivision, "authorized representative" shall be defined in regulations promulgated by the commissioner.

8. Except as part of a transaction pursuant to subdivision seven of this section or as necessary for a food distributor to redeem SNAP benefits subsequent to such a transaction, any acquisition, acceptance, purchase, possession, sale, transfer, alteration or manufacture of authorizations to participate or SNAP benefits, real or counterfeit, by any person shall constitute an unauthorized use of said authorizations or benefits. For purposes of this subdivision, the term "person" shall mean any individual, corporation, partnership, association, agency, or other legal entity, or any part thereof.

9.(a) The parent or other individual who is living with and exercising parental control over a child under the age of eighteen who has an absent parent is not eligible to participate in the supplemental nutrition assistance program if such person refuses to cooperate with the office in establishing the paternity of the child (if the child is born out of wedlock) and in obtaining support for the child or the parent (or other individual) and the child. This paragraph does not apply to the parent (or other individual) if the office determines that there is good cause for the refusal to cooperate.

(b) A putative or identified noncustodial parent of a child under the age of eighteen is not eligible to participate in the supplemental nutrition assistance program if such individual refuses to cooperate with the office in establishing the paternity of the child (if the child is born out of wedlock) and in providing support for the child. The use of the information collected pursuant to this paragraph shall be limited to the purposes for which the information is collected and is subject to the confidentiality provisions set forth in section one hundred thirty-six of this chapter.

(c) To the extent not inconsistent with federal law and regulations,

an individual is not eligible to participate in the supplemental nutrition assistance program as a member of any household if the individual is under court order to pay child or combined child and spousal support and has accumulated support arrears equivalent to or greater than the amount of current support due for a period of four months.

10. Notwithstanding any other provision of law to the contrary, the office shall develop a brief, simplified application form for the supplemental nutrition assistance program only. The office shall develop the form in consultation with food stamp outreach organizations and consider how the form may be used to reach as many potential applicants as possible, especially those over sixty years of age and those who are employed.

11. (a) Notwithstanding any other provision of law to the contrary, the office shall establish a statewide restaurant meals program as part of SNAP. Under the restaurant meals program, households containing elderly or disabled members, and their spouses, as defined in 7 U.S.C. 2012(j), or homeless individuals, as defined in 7 U.S.C. 2012(l), shall have the option in accordance with 7 U.S.C. 2012(k) to redeem their SNAP benefits at private establishments that contract with the office to offer meals for eligible individuals at concessional prices subject to 7 U.S.C. 2018(h).

(b) The office shall adopt any rules necessary to implement the provisions of this subdivision.

§ 95-a. State food stamp outreach program. 1. In accordance with federal requirements and to the extent that federal matching funds are available, the department shall develop and implement an outreach plan to inform low-income households potentially eligible to receive food stamps and to encourage the participation of eligible households that wish to participate.

2. In developing and implementing such a plan the department and/or its local districts are authorized and empowered, subject to the

approval of the director of the budget and provided that federal aid is available therefor, to enter into contractual agreements with public and/or private organizations to develop and implement local, regional, and statewide outreach programs.

3. Each commissioner of social services shall develop and submit to the department on an annual basis for its approval, a local outreach plan governing the use of local social services personnel and services provided by federally funded and other agencies and organizations to inform potentially eligible households of the availability and benefits of the program and to encourage and facilitate the participation of eligible households. The department shall provide commissioners of social services with technical assistance as needed to carry out the provisions of this subdivision.

4. As part of each local outreach plan, social services officials shall take all steps necessary to maintain a supply of information leaflets in public buildings, including but not limited to local unemployment insurance and employment services offices of the department of labor, institutions and facilities under the supervision or control of the department of health, food stores, union halls, community centers and local agencies providing services to the elderly to help insure that eligible persons are informed of the food stamp program.

5. The department shall periodically distribute to all newspapers, and to television and radio stations throughout the state, public service announcements describing the food stamp program, including the toll-free telephone numbers for food stamp information, and shall promptly inform such media of significant changes in the program affecting eligibility requirements and/or the amount of the food stamp bonus.

6. The department shall establish procedures in cooperation with the industrial commissioner of the department of labor to ensure that informational leaflets about the food stamp program are sent to each local employment services office for distribution pursuant to section five hundred and forty of the labor law. Each leaflet shall include but not be limited to: the phone number for the New York State food stamp

hotline, estimated maximum income eligibility levels by household size for participation in the food stamp program and the availability of local social services departments to provide additional information about the program.

7. In accordance with applicable federal laws, rules and regulations the department shall make available appropriate bilingual materials so that potentially eligible non English speaking individuals may be informed about the food stamp program.

8. The department shall promulgate rules and regulations, and take all other actions necessary for the effective implementation of this section.

§ 96. Use of subprofessional staff. Any inconsistent provision of law, general, special or local notwithstanding, a local social services district shall provide for the training and use of subprofessional staff, with particular emphasis on the use of public assistance recipients in accordance with state and federal requirements.

§ 97. Low-income home energy assistance program. 1. The department is authorized to develop and submit to the governor the application and plan required by title twenty-six of the federal omnibus budget reconciliation act of nineteen hundred eighty-one, and to amend and to take whatever other action may be necessary with respect to such plan, including, but not limited to, acting for the state in any negotiations relative to the submission of such plan, and making such arrangements and taking such action, not inconsistent with law, as may be required to submit, implement, administer and operate such plan, and to secure for the state the benefits available under such act.

2. Each social services district shall be required, in accordance with the state plan and federal regulations, to participate in the federal low-income home energy assistance program and to assist eligible households found in such districts to obtain low-income home energy

assistance. However, only those persons who qualify for low-income home energy assistance in accordance with federal and state requirements, and standards promulgated by the department, shall be certified as eligible for and entitled to receive said home energy assistance. No person, however, shall be certified as eligible for and entitled to receive said home energy assistance if no federal funds are available for such purpose.

3. Any inconsistent provision of law notwithstanding, the amount of any home energy assistance payments or allowances provided to an eligible household under said plan shall not be considered income or resources of such households, or of any member thereof, for any purpose under any federal or state law, including any law relating to taxation, food stamps, public assistance or other benefits available pursuant to this chapter.

4. Expenditures made by a social services district pursuant to the federal low-income home energy assistance program, including the costs of administration, shall be subject to one hundred percent reimbursement by the state, if and for so long as federal funds are available for the full amount of such expenditures.

5. No less than fifteen percent of the funds available to New York state under the federal low-income home energy assistance program shall be used for low-cost residential weatherization or other energy-related home repair for low-income households, as follows:

a. No less than ten percent of the funds available to New York state under the federal low-income home energy assistance program shall be allocated to the division of housing and community renewal, the housing trust fund corporation, or the housing finance agency as designated by the division of housing and community renewal for the weatherization assistance program and other low-cost residential weatherization or other energy-related home repair for low-income households. All such programs and expenditures shall be provided in the annual New York state weatherization assistance program state plan or by agreement with the office of temporary and disability assistance.

b. Administrative funds to implement the program described in this subdivision at the state and local levels shall be set at ten percent of the total amount allocated to the division of housing and community renewal. Administrative monies shall be derived from funds identified by the division of the budget as that portion of the home energy assistance program grant reported to the federal department of health and human services for state administration of such program.

TITLE 6

POWERS TO ENFORCE SUPPORT

Section 101. Liability of relatives to support.

101-a. Proceedings to compel support by persons in need thereof.

102. Powers of public welfare officials to bring and defend suits.

103. Seizure of property of persons liable for support.

104. Recovery from a person discovered to have property.

104-a. Transfer of property for the purpose of qualifying for assistance; presumption.

104-b. Liens for public assistance and care on claims and suits for personal injuries.

105. Claim on insurance.

106-a. Exemption from payment of fees for instruments affecting real or personal property; exemption of mortgages from mortgage recording tax.

106-b. Adjustment for incorrect payments.

106-c. Crediting of overpayment of tax to obligation of public assistance recipients.

107. Disposal of seized property and penalties collected.

108. Appointment of guardians for minors; notice of accounting.

109. Trust funds to be established.

110-a. Special provisions for legal services to enforce support to recover costs of public assistance and care and to establish paternity.

110-b. Recovery from a person discovered to have property;

notice.

111. Functions of the department.

§ 101. Liability of relatives to support. 1. Except as otherwise provided by law, the spouse or parent of a recipient of public assistance or care or of a person liable to become in need thereof shall, if of sufficient ability, be responsible for the support of such person, provided that a parent shall be responsible only for the support of a child under the age of twenty-one years. Step-parents shall in like manner be responsible for the support of step-children under the age of twenty-one years. Nothing herein shall impose any liability upon a person to support the adopted child of his or her spouse if such child was adopted after the adopting spouse is living separate and apart from the non-adopting spouse pursuant to a legally recognizable separation agreement or decree under the domestic relations law. Such liability shall not be imposed for so long as the spouses remain separate and apart after the adoption.

2. The liability imposed by this section shall be for the benefit of the public welfare district concerned or any legally incorporated non-profit institution which receives payments from any governmental agency for the care of medically indigent persons, and such liability may be enforced by appropriate proceedings and actions in a court of competent jurisdiction. Such proceedings and actions may be brought by such an institution in any court wherein a similar proceeding or action could be brought by a public welfare official.

3. The expiration of any period of time for the payment of maintenance by a court in a matrimonial action shall not be a bar to the enforcement of the liability imposed by this section.

§ 101-a. Proceedings to compel support by persons in need thereof. A recipient of public assistance or care or a person liable to become in need thereof may bring proceedings in a court of competent jurisdiction against any person responsible for his or her support as provided in

section one hundred one of this chapter to compel any such person so responsible to provide for or contribute to such support.

§ 102. Powers of public welfare officials to bring and defend suits.

A public welfare official responsible, by or pursuant to any provision of this chapter, for the administration of the public assistance or care granted or applied for is empowered to bring proceedings in a court of competent jurisdiction

1. to compel any person liable by law for support to contribute to the support of any person cared for at public expense, or person liable to become so dependent. A bond may be required of such person liable for support to indemnify the public welfare district against the cost of the support of such person;

2. to recover penalties, forfeitures and prosecute any bonds, undertakings and recognizances;

3. and defend in any court all matters relating to the support of persons at public expense.

§ 103. Seizure of property of persons liable for support. The responsible public welfare official may apply to a court having jurisdiction in actions involving an amount equal to the value of property to be seized for a warrant to seize the real or personal estate of a person who absents himself, leaving any one for whose support he is liable dependent upon public support or liable to become so dependent. If such a warrant be issued, the public welfare official may seize the property and apply the proceeds as directed by the court.

§ 104. Recovery from a person discovered to have property. 1. A public welfare official may bring action or proceeding against a person discovered to have real or personal property, or against the estate or the executors, administrators and successors in interest of a person who

dies leaving real or personal property, if such person, or any one for whose support he is or was liable, received assistance and care during the preceding ten years, and shall be entitled to recover up to the value of such property the cost of such assistance or care. Any public assistance or care received by such person shall constitute an implied contract. No claim of a public welfare official against the estate or the executors, administrators and successors in interest of a person who dies leaving real or personal property, shall be barred or defeated, in whole or in part, by any lack of sufficiency of ability on the part of such person during the period assistance and care were received.

Nor shall the claim asserted by a public welfare official against any person under this section be impaired, impeded, barred or defeated, in whole or in part, on the grounds that another person or persons may also have been liable to contribute.

In all claims of the public welfare official made under this section the public welfare official shall be deemed a preferred creditor.

2. No right of action shall accrue against a person under twenty-one years of age by reason of the assistance or care granted to him unless at the time it was granted the person was possessed of money and property in excess of his reasonable requirements, taking into account his maintenance, education, medical care and any other factors applicable to his condition.

3. To the extent described in section 7-1.12 of the estates, powers and trusts law, the trustee of a supplemental needs trust which conforms to the provisions of such section 7-1.12 shall not be deemed to be holding assets for the benefit of a beneficiary who may otherwise be the subject of a claim under this section and no action may be brought against either the trust or the trustee to recover the cost of assistance or care provided to such person, or anyone for whose support such person is or was liable.

4. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not assert any claim

under any provision of this chapter to recover payments of public assistance if such payments were reimbursed by child support collections.

§ 104-a. Transfer of property for the purpose of qualifying for assistance; presumption. For the purposes of the provisions of this chapter disqualifying a person from eligibility for a category of public assistance or care by reason of his voluntary transfer of property, a transfer of property made within one year from the date of the person's application for such assistance shall be presumed to have been made for the purpose of qualifying for such assistance.

§ 104-b. Liens for public assistance and care on claims and suits for personal injuries. 1. If a recipient of public assistance and care shall have a right of action, suit, claim, counterclaim or demand against another on account of any personal injuries suffered by such recipient, then the public welfare official for the public welfare district providing such assistance and care shall have a lien for such amount as may be fixed by the public welfare official not exceeding, however, the total amount of such assistance and care furnished by such public welfare official on and after the date when such injuries were incurred. In all such cases, notice of the commencement of such an action shall be served upon the public welfare district that has provided or is providing such assistance and care, or upon the department of health.

The commissioner shall endeavor to ascertain whether such person, firm or corporation alleged to be responsible for such injuries is insured with a liability insurance company, as the case may be, and the name thereof.

2. No such lien shall be effective, however, unless a written notice containing the name and address of the injured recipient, the date and place of the accident, and the name of the person, firm or corporation alleged to be liable to the injured party for such injuries, together with a brief statement of the nature of the lien, the amount claimed and

that a lien is claimed upon the said right of action, suit, claim, counterclaim or demand by the public welfare official be served prior to the payment of any moneys to such injured party, by certified with return receipt or registered mail upon such person, firm or corporation, and his or her, its or their attorney, if known, and upon any insurance carrier which has insured such person, firm or corporation against such liability. A copy of the notice of lien shall be mailed to such carrier at least twenty days prior to the date on which such carrier makes a payment to the injured party. Except as against such carrier, the effectiveness of the lien against any other party shall not be impaired by the failure to mail the required notice to such carrier. In addition, a true copy of such notice shall be served by regular mail to the welfare recipient and to his or her attorney, if known. Such mailing shall be deemed to be effective, notwithstanding any inaccuracy or omission, if the information contained therein shall be sufficient to enable those to whom the notice is given to identify the injured recipient and the occurrence upon which his or her claim for damages is based.

3. Upon the service of the notice, as aforesaid, the local public welfare official shall file a true copy thereof in the office of the clerk of the county in which his office is located, and, thereupon the lien of the public welfare official in the amount therein stated shall attach to any verdict, decision, decree, judgment, award or final order in any suit, action or proceeding in any court or administrative tribunal of this state respecting such injuries, as well as the proceeds of any settlement thereof, and the proceeds of any settlement of any claim or demand respecting such injuries prior to suit or action.

4. An amended notice of lien may be served and filed by such public welfare official in the same manner and subject to the provisions of this section governing the notice of lien originally served and filed pursuant to this section.

5. (a) The person, firm, corporation or insurance carrier, having notice that a social services official has served and filed a notice of lien, and intending to make payment on the personal injury claim upon

which the lien was filed, shall notify the social services official by certified or registered mail, at least ten days prior to the date such payment is proposed to be made, of the amount and date thereof.

(b) Notwithstanding any inconsistent provision of this section, the social services official shall have the right to serve and file by certified or registered mail, within five days after receipt of such notice, excluding Saturdays, Sundays, and holidays, an amended notice of lien to include the amount of public assistance and care furnished to the recipient after the date such official served and filed the notice of lien or the last previous amendment thereof.

(c) A person, firm, corporation or insurance carrier that fails to give the notice required by paragraph (a) of this subdivision shall be liable to the social services official to the same extent that it would have been liable had such notice been given and the social services official had filed the amended notice of lien provided for in paragraph (b) of this subdivision.

6. Such lien may be enforced by action against those alleged to be liable for such injuries, as aforesaid, by the local public welfare official in any court of appropriate jurisdiction.

7. The aforesaid lien shall be valid and effective, when the notice thereof and the statement are served and filed as aforesaid, and shall continue until released and discharged by the local public welfare official by an instrument in writing and filed in the said county clerk's office, and no release, payment, discharge or satisfaction of any such claim, demand, right of action, suit or counterclaim shall be valid or effective against such lien.

8. The county clerk shall, at the expense of the county, provide a suitable book with proper index, to be called the public welfare lien docket, in which he shall enter the names of the public welfare official and the recipient, the date and place of the accident and the name or names of those alleged to be liable for such injuries, as aforesaid.

9. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subject and subordinate to the lien on the

amount recovered by verdict, report, decision, judgment, award or decree, settlement or compromise, of any attorney or attorneys retained by any such injured person to prosecute his claim for damages for personal injuries, having or acquiring by virtue of such retainer a lien on the cause of action of any such injured person, or on the verdict, report, decision, judgment, decree made in, or any settlement or compromise of, any such action or claim for damages for personal injuries.

10. The provisions of this section to the contrary notwithstanding, the lien herein created shall be subordinate to the lien of any hospital claimed under and to the extent recognized by section one hundred eighty-nine of the lien law, but only for treatment, care and maintenance given, prior to or in excess of the public assistance and care granted by the public welfare official.

11. The provisions of this section shall not be deemed to adversely affect the right of a public welfare official who has taken an assignment of the proceeds of any such right of action, suit, claim, counterclaim or demand, to recover under such assignment the total amount of assistance and care for which such assignment was made.

12. The provisions of this section to the contrary notwithstanding, the lien herein created shall not apply with respect to any claim or benefits payable to the recipients of any form of public assistance or care, part of which is paid for by the government of the United States or any agency thereof when, in the opinion of the commissioner, such lien would jeopardize the continuation of such federal contribution.

13. The provisions of this section to the contrary notwithstanding, the public welfare official may in his discretion release to the injured person an amount not to exceed the cost of two years' maintenance from the lien herein created.

14. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not assert any claim under any provision of this chapter to recover payments of public

assistance if such payments were reimbursed by child support collections.

This section shall not apply to any claim or award which is or may be allowed pursuant to the provisions of the workers' compensation law or the volunteer firefighters' benefit law.

§ 105. Claim on insurance. If a person, who has received public assistance or care, shall die leaving insurance, and the estate of the assured is named as beneficiary, or no beneficiary is named, the social services official shall be entitled to a preferred claim to be paid out of such insurance to the amount of the cost of such assistance and care, and for funeral expenses not to exceed two hundred fifty dollars. If the insured leaves a surviving spouse or children under the age of twenty-one years who are, or are liable to become, public charges, the social services official may, in his discretion, waive his claim to such insurance or any part thereof to which he would otherwise be entitled.

§ 106-a. Exemption from payment of fees for instruments affecting real or personal property; exemption of mortgages from mortgage recording tax. Any inconsistent provision of law notwithstanding, a social services official shall not be required to pay any fee to any clerk, register or other public officer for entering, filing, registering or recording any instrument affecting real or personal property or to the surrogate court when such official in taking any proceeding with respect to the estate of a person who was a recipient of benefits from social services pertaining to the exercise by the social services official of any of the powers conferred or duties imposed upon him by any of the provisions of this chapter. Mortgages on real property taken by social services officials pursuant to this chapter for assistance and care of persons at public expense shall be exempt from the mortgage recording taxes imposed by article eleven of the tax law. The exemption from mortgage recording taxes herein provided shall also apply to all mortgages heretofore taken by social services officials and recorded without payment of mortgage taxes, retroactively to the date of

recording of such mortgages.

§ 106-b. Adjustment for incorrect payments. Any inconsistent provision of law notwithstanding, a social services official shall, in accordance with the regulations of the department and consistent with federal law and regulations, take all necessary steps to correct any overpayment or underpayment to a public assistance recipient; provided, however, that a social services official may waive recovery of a past overpayment, in the case of an individual who is not currently a recipient of public assistance, where the cost of recovery is greater than the cost of collections as determined in accordance with department regulations consistent with federal law and regulations. For purposes of this section, overpayment shall include payments made to an eligible person in excess of his needs as defined in this chapter and payments made to ineligible persons (including payments made to such persons pending a fair hearings decision). The commissioner shall promulgate regulations to implement procedures for correcting overpayments and underpayments. The procedures for correcting overpayments shall be designed to minimize adverse impact on the recipient, and to the extent possible avoid undue hardship. Notwithstanding any other provision of law to the contrary, no underpayment shall be corrected with respect to a person who is currently not eligible for or in receipt of home relief or aid to dependent children, except that corrective payments may be made with respect to persons formerly eligible for or in receipt of aid to dependent children to the extent that federal law and regulations require.

§ 106-c. Crediting of overpayment of tax to obligation of public assistance recipients. 1. The commissioner shall enter into an agreement with the commissioner of taxation and finance which shall set forth the procedures for the crediting of overpayments of tax owed to an individual taxpayer, estate or trust to the repayment of overpayments of grants and allowances owed to the department or a social services district by such person pursuant to the provisions of section one hundred seventy-one-f of the tax law and is authorized to furnish to the

commissioner of taxation and finance such information and to take such other actions as may be necessary to carry out the agreement provided for in such section, for the crediting of overpayments of tax to repayment of overpayments of public assistance.

The department shall by regulation establish procedures by which any individual, estate or trust which is the subject of a certification to the department of taxation and finance in accordance with such agreement may contest such certification. Such regulations and the notice required by subdivision three of section one hundred seventy-one-f of the tax law shall set forth defenses which may be available to the individual, estate or trust to contest such certification and the manner in which a review of the certification based on such defenses may be obtained.

2. In accordance with such agreement and the provisions of section one hundred seventy-one-f of the tax law, the department shall be entitled to receive payments to satisfy the payment obligation of a person receiving or who has received grants and allowances pursuant to section one hundred thirty-one-a, section one hundred thirty-one-s, section three hundred one, and section three hundred fifty-j of this chapter, in accordance with a written final determination of the department or a social services district, provided that no proceeding for administrative or judicial review shall then be pending and the time for initiation of such proceeding shall have expired.

§ 107. Disposal of seized property and penalties collected. All properties seized and penalties collected shall be administered in accordance with the direction of the court having jurisdiction. After the expenses approved by the court have been paid the balance shall be used for the maintenance of such person, or to reimburse the public welfare fund for expenditures previously made for his assistance or care.

§ 108. Appointment of guardians for minors; notice of accounting. If the beneficiary of such seized property or penalty which is collected

shall be a minor who is not in the custody of a parent and for whom no guardian has been appointed, the court having jurisdiction over the matter shall appoint a guardian of the property for such minor. Notice of the accounting shall be given to the person, or the executors, administrators or successors in interest of the person, for whose support the property has been seized or the penalty collected, and to the guardian of any minor affected thereby.

§ 109. Trust funds to be established. A public welfare official shall deposit any funds received from the seizure of property or collection of penalties for the support of a living person. Such fund shall, as provided in section eighty-seven, be held and used upon such terms as the court shall direct for the benefit of such person. If the beneficiary of the fund is a minor, the court may require the public welfare official to give security and to report.

§ 110-a. Special provisions for legal services to enforce support to recover costs of public assistance and care and to establish paternity.

1. Any inconsistent provision of law notwithstanding, the appropriating body of a social services district may authorize and make provision for the social services commissioner of such district to obtain: (a) necessary legal services on a fee for service basis or other appropriate basis which the department may approve, to obtain support from spouses and parents, to recover costs of public assistance and care granted, to establish paternity, and to initiate and prosecute proceedings for the commitment of the guardianship and custody of destitute or dependent children to authorized agencies, pursuant to the provisions of this chapter and the domestic relations law, the family court act and other laws, and (b) necessary services of private investigators, licensed pursuant to section seventy of the general business law, on a fee for service or other appropriate basis which the department may approve, to provide investigative assistance in efforts of the district to locate absent parents and fathers of children born out of wedlock.

2. Expenditures made by a social services district for the costs of

such services shall be subject to reimbursement by the state pursuant to the provisions of section one hundred fifty-three or other appropriate provisions of this chapter.

§ 110-b. Recovery from a person discovered to have property; notice.

Notwithstanding any law, rule or regulation to the contrary, an applicant for public assistance shall be fully informed in writing that he or she may be liable to reimburse the state for public assistance benefits received, as provided for in this title. Notice may be given as part of an informational booklet promulgated by the office of temporary and disability services and as a standalone document on his or her rights and responsibilities. Nothing in this section shall be deemed to prevent the local social services district from maintaining its records electronically.

§ 111. Functions of the department. To assist welfare departments to carry out their responsibilities, powers and duties to enforce the liability of persons for the support of certain of their dependents who are applicants for or recipients of public assistance or care or who are in receipt of child support services pursuant to section one hundred eleven-g of this chapter, the department shall:

1. Continue to act as, and perform the functions of, state information agent for the purposes of the uniform interstate family support act of this state (article 5-B of the family court act) and reciprocal laws of other states.

2. As required by section three hundred seventy-two-a, aid in the location of deserting parents and, for such purpose, operate a central registry of deserting parents, obtain and transmit pertinent information and data from public officials and agencies and assist in the training of local personnel employed to locate such parents.

3. Stimulate and encourage cooperation, through the holding of meetings and the exchange of information, between and among public

officials, law enforcement agencies and courts having powers and duties relating to the enforcement of the liability of persons for the support of indigent members of their families, including cooperation with public officials, agencies and courts of other states.

4. Upon request, or when required to do so by other provisions of law, advise such officials in the performance of their duties hereinabove referred to.

5. Develop or assist in the development of appropriate forms, guides, manuals, handbooks and other material which may be necessary or useful effectively to accomplish the foregoing and the purposes therefor.

TITLE 6-A

ESTABLISHMENT OF PATERNITY AND ENFORCEMENT OF SUPPORT

Section 111-a. Federal aid; state plan.

111-b. Functions, powers and duties of the department.

111-c. Functions, powers and duties of social services officials.

111-d. State reimbursement.

111-e. Reimbursement to the state.

111-f. Federal incentives.

111-g. Availability of paternity and support services.

111-h. Support collection unit.

111-i. Child support standards.

111-j. Interception of unemployment insurance benefits.

111-k. Procedures relating to acknowledgements of parentage, agreements to support, and genetic tests.

111-m. Agreement relating to information obtained by the state directory of new hires.

111-n. Review and cost of living adjustment of support orders.

111-o. Data matches with financial institutions.

111-p. Authority to issue subpoenas.

111-q. Voiding of fraudulent transfers of income or property.

111-r. Requirement to respond to requests for information.

111-s. Access to information contained in government and private

records.

111-t. Authority to secure assets.

111-u. Liens.

111-v. Confidentiality, integrity, and security of information.

§ 111-a. Federal aid; state plan. 1. The department is hereby designated as the single state agency to supervise the administration of the state's child support program provided for by this title, and a single organizational unit shall be established within the department for such purposes.

2. The department shall develop and submit a state child support program plan as required by part D of title IV of the federal social security act to the federal department of health, education and welfare for approval pursuant to such part in order to qualify the state for federal aid under such part. The department shall act for the state in any negotiations relative to the submission and approval of such plan and shall make such arrangements as may be necessary to obtain and retain such approval and to secure for the state the benefits of the provisions of such federal act relating to child support programs. The department shall promulgate regulations not inconsistent with law as may be necessary to assure that such plan conforms to the provisions of such part and any federal regulations adopted pursuant thereto. The department shall make all reports required by law to be made to such federal department in the form and manner required by federal regulations.

§ 111-b. Functions, powers and duties of the department. 1. The single organizational unit within the department shall be responsible for the supervision of the activities of state and local officials relating to establishment of paternity of children born out-of-wedlock, location of absent parents and enforcement of support obligations of legally responsible relatives to contribute for the support of their dependents.

2. The department is hereby authorized to accept, on behalf of the

state and the social services districts concerned, assignments of support rights owed to persons receiving (i) aid to dependent children pursuant to title ten of article five of this chapter or, (ii) where appropriate, foster care maintenance payments made pursuant to title IV-E of the federal social security act; provided however, that it will not be appropriate where such requirement will have a negative impact upon the health, safety or welfare of such child or other individuals in the household or impair the likelihood of the child returning to his or her family when discharged from foster care or, (iii) home relief pursuant to title three of article five of this chapter. Notwithstanding any inconsistent provisions of title six of this article or any other provisions of law, the department may enforce such assigned support rights either directly, through social services officials or, if there is in effect an approved agreement between the social services official and another governmental agency, through such other agency. In any proceeding to enforce such assignment, the official bringing such proceeding shall have the same rights as if the proceeding were being brought to enforce section four hundred fifteen of the family court act.

2-a. The department shall prepare a notice which shall be distributed by social services officials to persons who may be required to assign support rights which notice shall explain the rights and obligations that may result from the establishment of paternity and the right of the assignor to be kept informed, upon request, of the time, date and place of any proceedings involving the assignor and such other information as the department believes is pertinent. The notice shall state that the attorney initiating the proceeding represents the department.

3. In appropriate cases, the department is authorized to utilize support enforcement and collection and location services made available through the secretary of health and human services, including the services of federal courts, the federal parent locator service, the federal case registry of child support orders, the national directory of new hires, and the treasury department, if and so long as authorized and required by federal law.

4. The department shall maintain and operate a parent locator service

with respect to cases being provided services pursuant to this title.

To effectuate the purposes of this subdivision, the commissioner shall request and receive from the departments, authorities, boards, bureaus, commissions, corporations, councils, funds, offices, or other agencies of the state, or any of its political subdivisions, and all such organizational entities of the state and social services districts are hereby directed, to provide and the political subdivisions are hereby authorized to provide, such assistance and data as will enable the department and social services districts to properly carry out their powers and duties to locate such parents and to enforce their liability for the support of their children. Any records established pursuant to the provisions of this section shall be available only to the secretary of health and human services, office of the inspector general, social services districts, district attorneys, county attorneys, corporation counsels, and courts having jurisdiction in any proceeding under article four, five, five-A, or five-B of the family court act; provided, however, no organizational entity of the state need make available any data or information which is otherwise required by statute to be maintained in a confidential manner.

4-a. (a) The department shall maintain and operate a state case registry that contains records with respect to:

- (1) each case receiving services pursuant to this title; and
- (2) each support order established or modified in the state on or after the first day of October, nineteen hundred ninety-eight.

(b) For the purpose of subparagraph two of paragraph (a) of this subdivision, the term support order means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, including any adjusted order issued by a support collection unit, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief.

(c) Each case record in the state case registry with respect to cases described in subparagraph one of paragraph (a) of this subdivision for which a support order has been established shall include a record of:

(1) the amount of monthly (or other periodic) support owed under the order, and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order;

(2) any amount described in subparagraph one of this paragraph that has been collected;

(3) the distribution of such collected amounts;

(4) the birth date of any child for whom the order requires the provision of support; and

(5) the amount of any lien imposed with respect to the order pursuant to section one hundred eleven-u of this article.

(d) The department shall update and monitor each case record in the state registry described in subparagraph one of paragraph (a) of this subdivision on the basis of:

(1) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;

(2) information obtained from comparison with federal, state or local sources of information;

(3) information on support collections and distributions; and

(4) any other relevant information.

(e) Information maintained as part of the state case registry shall be made available to other state and federal agencies as provided for in federal statutes and regulations promulgated by the federal secretary of health and human services.

5. (a) There shall be established for each state fiscal year a statewide child support collections goal for amounts of collections of support obligations pursuant to this title, which goal shall be set forth in that portion of the state's local assistance budget intended for the appropriation of reimbursement to social services districts pursuant to this chapter. The commissioner shall, subject to the approval of the director of the budget, annually allocate a portion of the statewide goal to each social services district, which portion shall be based upon the district's portion of the statewide aid to dependent children program and other relevant factors.

(b) Notwithstanding any inconsistent provision of section one hundred fifty-three of this chapter, for each social services district which fails to meet its portion of the collection goal established by this section, the commissioner shall deny state reimbursement for such district's expenditures for aid to dependent children, in an amount equal to the difference between the amount of non-federal funds such district is required to repay to the state out of collections actually made and the amount of non-federal funds such district would have been required to repay to the state had it met its collection goal.

(c) Any social services district which has been determined to have failed to meet its portion of the collection goal may request a redetermination by the commissioner or his designee in a manner to be established by department regulations. Upon a showing by such district that such failure was due in whole or in part to factors other than those administrative and processing functions or organizations which are subject to the jurisdiction of such district's local legislative body, the commissioner shall waive such failure in whole or in part and shall restore all or a corresponding portion of any state reimbursement previously denied pursuant to this section.

(d) For purposes of determining the amount of child support collections which are attributable toward meeting a district's portion of the statewide collections goal, any amounts collected by one social services district on behalf of another shall be credited to the district to which support payments have been assigned. Support payments collected on behalf of another state or on behalf of persons not in receipt of aid to dependent children shall not be taken into consideration in determining whether such district has met its goal.

(e) The department may for purposes of administrative convenience set monthly or quarterly goals based upon each district's annual goal and may deny reimbursement on a monthly or quarterly basis, subject to a final adjustment at the end of each year reflecting the extent to which each such district has met its portion of the statewide annual goal.

6. When the commissioner has determined that a social services district has failed to meet its portion of the statewide child support collections goal, as determined in accordance with the provisions of subdivision five of this section, or has failed to comply with the

applicable provisions of federal law and regulations, he shall notify such district and the appropriate local legislative body of such determination and may promulgate any regulations he determines are necessary to improve such district's organization, administration, management or program. Such regulations shall be fully complied with by the effective date of such regulations.

7. The department, through the commissioner, shall enter into the agreement provided for in section one hundred seventy-one-c of the tax law and is authorized to furnish to the commissioner of taxation and finance and the state tax commission such information and to take such other actions as may be necessary to carry out the agreement provided for in such section, for the crediting of overpayments of tax to past-due support which is owed to persons receiving services pursuant to this title and title six-B of this article. A person receiving services under this title shall receive a pro rata share of the overpayment of tax, based on the amount of past-due support owed to such person as certified to the tax commission by the department pursuant to section one hundred seventy-one-c of the tax law, in cases where the individual, estate or trust owing past-due support to such person owes past-due support to other persons or entities so certified to the tax commission by the department. Amounts certified to the state tax commission under such agreement may include amounts specified in subdivision eight of this section. The amount paid by the state comptroller to the department pursuant to subdivision one of section one hundred seventy-one-c of the tax law shall be distributed in accordance with applicable provisions of this chapter and the department's regulations. To the extent permitted by federal law, the department may also certify amounts to the federal department of health and human services for tax interception to the same extent as it certifies amounts pursuant to such section of the tax law.

The department shall by regulation establish procedures by which any individual, estate or trust which is the subject of a certification to the state tax commission in accordance with such agreement may contest such certification based on defenses that are not subject to family court jurisdiction. Such regulations and the notice required by subdivision four of section one hundred seventy-one-c of the tax law

shall set forth defenses which may be available to the individual, estate or trust to contest such certification, and the manner in which a review of the certification based on such defenses may be obtained.

8. (a) Amounts certified to the state tax commission under the agreement described in subdivision seven of this section for persons who are receiving services pursuant to this title may include:

(i) amounts representing delinquencies which have accrued under a court order of support;

(ii) with respect to any court order of support made before September first, nineteen hundred eighty-four which provided for periodic payments toward an established arrears amount, the entire amount of such arrears where the respondent is, at any time after September first, nineteen hundred eighty-four, delinquent in making such periodic payments; and

(iii) with respect to any court order of support made on or after September first, nineteen hundred eighty-four which establishes an arrears amount, the entire amount of such arrears, unless such order includes a finding that anticipated tax refunds pursuant to the most recently filed state and federal tax returns have been considered by the court and taken into account in determining the amount of periodic payments to be made toward the arrears amount, or in determining the amount of the current support order, and expressly provides that such arrears are not to be so certified.

(b) For the purpose of the state child support program any payment made by a respondent which is insufficient to fully satisfy both a current court order of support and a periodic payment toward the balance of any arrears amount established by court order shall be first applied toward the current order of support or any delinquency thereon and then toward the periodic payment on any arrears amount established by court order unless otherwise required by federal regulation.

* 10. (a) The department, through the commissioner, shall enter into the agreement provided for in section sixteen hundred thirteen-a of the tax law and is authorized to furnish to the director of the lottery and the division of the lottery such information and to take such other actions as may be necessary to carry out the provisions of the agreement provided for in such section, for the crediting of lottery prizes of six hundred dollars or more to past-due support which is owed to persons

receiving services pursuant to this title. A person receiving services under this title shall receive a pro rata share of the prize winning based on the amount of past-due support owed to such person as provided to the division of the lottery by the department pursuant to section sixteen hundred thirteen-a of the tax law, in cases where the individual, estate or trust owing past-due support to such person owes past-due support to other persons or entities so provided to the division of the lottery by the department. Amounts provided to the division of the lottery under such agreement may include amounts specified in this subdivision. The amount paid by the state comptroller to the department pursuant to subdivision one of section sixteen hundred thirteen-a of the tax law shall be distributed in accordance with applicable provisions of this chapter and the department's regulations.

(b) The department shall by regulation establish procedures by which any individual, estate or trust which is the subject of crediting of any lottery prize of six hundred dollars or more to the state division of the lottery in accordance with such agreement may contest such crediting based on defenses that are not subject to family court jurisdiction. Such regulations shall require that notice be given to the individual, estate or trust which shall set forth:

(i) defenses which may be available to the individual, estate or trust to contest such crediting;

(ii) the manner in which a review of the crediting of lottery prizes of six hundred dollars or more based on such defenses may be obtained;

(iii) the address and telephone number of the local department of social services' support collection unit which may be contacted with respect to correction of any error in such crediting concerning such individual's, estate's or trust's liability for past-due support or with respect to payment of such liability; and

(iv) the time frame by which such a defense must be made.

* NB There are 2 sb 10's

* 10. The commissioner must review the child support standards act at least once every four years to ensure that its application results in the determination of appropriate child support amounts. As part of such review, the commissioner must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from the basic

child support obligation. The analysis of the data must be used to ensure that such deviations are limited and, if appropriate, necessary revisions to the child support standards act must be submitted to the legislature to accomplish such purpose.

* NB There are 2 sb 10's

11. (a) Amounts certified to the division of the lottery under the agreement described in subdivision ten of this section for persons who are receiving services pursuant to this title may include:

(i) amounts representing delinquencies which have accrued under a court order of support;

(ii) with respect to any court order of support made which establishes an arrears amount, the entire amount of such arrears.

(b) For the purpose of the state child support program any payment made by a respondent which is insufficient to fully satisfy both a current court order of support and a periodic payment toward the balance of any arrears amount established by court order shall be first applied toward the current order of support or any delinquency thereon and then toward the periodic payment on any arrears amount established by court order unless otherwise required by federal regulation.

* 12. (a) The department, through the commissioner, shall enter into the agreement provided for in section five hundred ten of the vehicle and traffic law and is authorized to furnish to the commissioner of motor vehicles such information and to take such actions as may be necessary to carry out the agreement provided for in such section, for the enforcement of child support orders through the suspension of delinquent obligors' driving privileges.

(b) (1) When a support obligor who is or was under a court order to pay child support or combined child and spousal support to a support collection unit on behalf of persons receiving services under this title has accumulated support arrears equivalent to or greater than the amount of support due pursuant to such order for a period of four months, the office of temporary and disability assistance shall notify the support obligor in writing that his or her continued failure to pay the support arrears shall result in notification to the department of motor vehicles to suspend the support obligor's driving privileges unless the support obligor complies with the requirements set forth in paragraph (e) of

this subdivision. For purposes of determining whether a support obligor has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of support arrears pursuant to this section; however, if at least four months of support arrears have accumulated subsequent to the date of the court order, the entire amount of any retroactive support may be collected pursuant to the provisions of this subdivision or as otherwise authorized by law.

(2) The department shall provide the notice required by subparagraph one of this paragraph by first class mail to the support obligor's last known address or such other place where the support obligor is likely to receive notice, or in the same manner as a summons may be served. Forty-five days after the date of such notice, if the support obligor has not challenged the determination of the support collection unit pursuant to subparagraph one of paragraph (d) of this subdivision or if the support obligor has failed to satisfy the arrears/past due support or to otherwise comply with the requirements set forth in paragraph (e) of this subdivision, the department shall notify the department of motor vehicles that the support obligor's driving privileges are to be suspended pursuant to section five hundred ten of the vehicle and traffic law. Upon the support obligor's compliance with the provisions of paragraph (e) of this subdivision, the department shall advise the department of motor vehicles within five business days that the suspension of the support obligor's driving privileges shall be terminated. If the support obligor appears in person at the support collection unit to satisfy the requirements of paragraph (e) of this subdivision, the support collection unit shall immediately provide a notice of compliance to the support obligor, in addition to the notice sent directly to the department of motor vehicles.

(3) Notwithstanding the requirements of this subdivision, no notice shall be issued by the department pursuant to subparagraph one of this paragraph to a support obligor from whom support payments are being received by the support collection unit as a result of an income execution or an income deduction order issued pursuant to section five thousand two hundred forty-one or five thousand two hundred forty-two of

the civil practice law and rules.

(c) The notice provided to a support obligor by the department pursuant to paragraph (b) of this subdivision shall contain the caption of the order of support, the date the order of support was entered, the court in which it was entered, the amount of the periodic payments directed, and the amount of arrears/past due support. In addition, the notice shall include:

(1) an explanation of the action required pursuant to paragraph (e) of this subdivision to be taken by the support obligor to avoid the suspension of his or her driving privileges;

(2) a statement that forty-five days after the date of the notice, the department of motor vehicles will be notified to suspend the support obligor's driving privileges unless the support obligor may challenge the support collection unit's determination as set forth in paragraph (d) of this subdivision within forty-five days of the date of such notice; a statement of the manner in which the support obligor may challenge the determination, and a statement that if the support obligor challenges the determination, a review will be completed by the support collection unit within seventy-five days of the date of the notice;

(3) a statement that if the support obligor does not challenge the support collection unit's determination then the department of motor vehicles shall be notified to suspend the support obligor's driving privileges unless the support obligor contacts the support collection unit to arrange for full payment or commencement of satisfactory payment arrangements on the arrears/past due support, or to comply otherwise with the requirements set forth in paragraph (e) of this subdivision, within forty-five days of the date of the notice;

(4) the address and telephone number of the support collection unit that the support obligor may contact to request information about a challenge or to comply with the requirements set forth in paragraph (e) of this subdivision;

(5) a statement that the suspension of driving privileges will continue until the support obligor pays the support arrears or complies otherwise with the requirements set forth in paragraph (e) of this subdivision; and

(6) a statement printed in boldface type that the support obligor's intentional submission of false written statements to the support

collection unit for the purpose of frustrating or defeating the lawful enforcement of support obligations is punishable pursuant to section 175.35 of the penal law.

(d) (1) A support obligor may challenge in writing the correctness of the determination of the support collection unit that the obligor's driving privileges should be suspended, and in support of the challenge may submit documentation demonstrating mistaken identity, error in calculation of arrears, financial exemption from license suspension pursuant to the conditions enumerated in paragraph (e) of this subdivision, the absence of an underlying court order to support such determination, or other reason that the person is not subject to such determination. Such documents may include but are not limited to a copy of the order of support pursuant to which the obligor claims to have made payment, other relevant court orders, copies of cancelled checks, receipts for support payments, pay stubs or other documents identifying wage withholding, and proof of identity. The support collection unit shall review the documentation submitted by the support obligor, shall adjust the support obligor's account if appropriate, and shall notify the support obligor of the results of the review initiated in response to the challenge within seventy-five days from the date of the notice required by paragraph (b) of this subdivision. If the support collection unit's review indicates that the determination to suspend driving privileges was correct, the support collection unit shall notify the support obligor of the results of the review and that the support obligor has thirty-five days from the date of mailing of such notice to satisfy the full amount of the arrears or commence payment of the arrears/past due support as specified in paragraph (e) of this subdivision and if the support obligor fails to do so, the support collection unit shall notify the department of motor vehicles to suspend the support obligor's driving privileges pursuant to section five hundred ten of the vehicle and traffic law. The support obligor shall be further notified that if the support obligor files objections with the family court and serves these objections on the support collection unit within thirty-five days from the date of mailing of the notice denying the challenge pursuant to subdivision five of section four hundred fifty-four of the family court act, the support collection unit shall not notify the department of motor vehicles to suspend the support

obligor's driving privileges until fifteen days after entry of judgment by the family court denying the objections.

(2) A support obligor may within thirty-five days of mailing of the notice denying his or her challenge by the support collection unit request that the family court review the support collection unit's determination pursuant to subdivision five of section four hundred fifty-four of the family court act. If the support obligor requests the family court to review the determination of the support collection unit, the support collection unit shall not notify the department of motor vehicles to suspend the support obligor's driving privileges until fifteen days after mailing of a copy of the judgment by the family court to the support obligor denying the objections.

(e) A support obligor who has received a notice that his or her driving privileges shall be suspended may avoid the suspension by:

(1) making full payment of all arrears/past due support to the support collection unit; or

(2) making satisfactory payment arrangements with the support collection unit for payment of the arrears/past due support and the current support obligation. "Satisfactory payment arrangements" shall mean:

(i) execution of a confession of judgment for the total balance of the arrears/past due support; and

(ii) execution of a verified statement of net worth on a form prescribed by the commissioner setting forth the obligor's income from all sources, liquid assets and holdings, copies of the obligor's drivers license, most recent federal and state tax return, and a representative pay stub, and an eighteen month employment history; and

(iii) execution and verification of a stipulation that the obligor will notify the support collection unit of all future changes of address until such time as the obligation to pay support is terminated; and

(iv) payment of support to the support collection unit by income execution pursuant to section five thousand two hundred forty-one of the civil practice law and rules, which shall include deductions sufficient to ensure compliance with the direction in the order of support and shall include an additional amount to be applied to the reduction of arrears as required by subdivision (b) of such section, or by execution of an agreement for payment of the arrears/past due support and any

current support directly to the support collection unit in an amount which is consistent with that which would have been made under such an income execution; provided however, that where the support obligor fails to comply with the agreement, he/she may avoid or terminate the suspension of driving privileges only by making at least fifty percent payment of all arrears/past due support to the support collection unit and in addition, entering into a payment plan pursuant to this subdivision with the support collection unit within fifteen days. However, in any case when the support obligor fails to comply with a payment plan as described herein more than once within twelve months, the obligor must pay the balance of all arrears/past due support to avoid or terminate license suspension. "Failure to comply" for these purposes shall mean missing payments in an amount equivalent to four months of support under the payment plan, unless the support obligor demonstrates that he or she has filed a petition for modification that is pending; or

(3) providing documentation that shows the support obligor is receiving public assistance or supplemental security income; or

(4) providing to the support collection unit the documentation required by clauses (i) through (iii) of subparagraph two of this paragraph, where such documentation is sufficient for the support collection unit to determine:

(i) that the support obligor's income, as defined by subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act, falls below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one of section four hundred thirteen of the family court act; or

(ii) that the amount of the support obligor's income, as defined by subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act, remaining after the payment of the current support obligation would fall below the self-support reserve as defined by subparagraph six of paragraph (b) of subdivision one of section four hundred thirteen of the family court act.

(f) A support obligor who alleges that he or she has not received actual notice pursuant to paragraph one of subdivision (b) of this section and whose driving privileges were suspended may at any time request a review pursuant to subdivision (d) of this section or comply

with the requirements of subdivision (e) of this section, and upon a determination that he or she has not accumulated support arrears equivalent to or greater than the amount of support due for a period of four months or that he or she meets the requirements of subdivision (e) of this section, the department shall notify the department of motor vehicles that the suspension of driving privileges shall be terminated.

* NB Repealed August 31, 2027

13. (a) The commissioner shall enter into the agreement provided for in section one hundred seventy-one-g of the tax law and is authorized to furnish to the commissioner of taxation and finance any information, and to take such other actions, as may be necessary to carry out the agreement provided for in such section, for the purpose of reviewing support orders pursuant to subdivision twelve of section one hundred eleven-h of this title.

(b) Information obtained under paragraph (a) of this subdivision shall be confidential and shall not be disclosed to persons or agencies other than those entitled to such information when such disclosure is necessary for the proper administration of the child support enforcement program pursuant to this title.

14. For purposes of this subdivision, the department or, pursuant to contract, a fiscal agent is authorized to collect and disburse any support paid pursuant to any order of child support or combined child and spousal support issued on or after the first day of January, nineteen hundred ninety-four under the provisions of section two hundred thirty-six or two hundred forty of the domestic relations law, or article four, five, five-A or five-B of the family court act, and which the court has ordered to be paid pursuant to an income execution issued by the sheriff, the clerk of the court, or the attorney for the creditor pursuant to subdivision (c) of section five thousand two hundred forty-one of the civil practice law and rules or an income deduction order issued by the court pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules. Such support received shall be disbursed within two business days of receipt. The department shall maintain records of its collection and disbursement of such support and furnish such records to the parties to the order

upon request. The department shall be entitled to collect an annual service fee not to exceed the maximum fee permitted pursuant to federal law for its provision of such services. Funds received in satisfaction of such fee shall be deposited in an account and shall be made available to the department for costs incurred in the implementation of this section. The department shall not furnish any additional services to the parties; however, a party seeking child support services may apply for such services pursuant to section one hundred eleven-g of this title. The department shall not be responsible for the collection and disbursement of any support until after it has received a copy of the income execution from the sheriff, the clerk of the court, or the attorney for the creditor or a copy of the income deduction order issued by the court and the person entitled to the payment of support pursuant to the order of support has submitted payment of the annual service fee if any, and unless its records show that it has received such support on behalf of the parties to the order, and that the party to whom the funds are to be disbursed has provided the department with any address changes.

15. (a) The department, through the commissioner, shall enter into the agreement provided for in section one hundred seventy-one-i of the tax law and is authorized to furnish to the commissioner of taxation and finance such information and to take such other actions as may be necessary to carry out such agreement.

(b) (1) When a support obligor who is or was under a court order to pay child support or combined child and spousal support to a support collection unit on behalf of persons receiving services under this title has accumulated support arrears equivalent to or greater than the amount of support due pursuant to such order for a period of four months, the office of temporary and disability assistance shall notify the support obligor in writing that his or her continued failure to fully pay the support arrears shall result in notification to the department of taxation and finance that they are authorized to collect such arrearage. For purposes of determining whether a support obligor has accumulated support arrears equivalent to or greater than the amount of support due for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due,

shall not be included in the calculation of support arrears pursuant to this section; however, if at least four months of support arrears have accumulated subsequent to the date of the court order, the entire amount of any retroactive support may be collected pursuant to the provisions of this subdivision or as otherwise authorized by law.

(2) The department shall provide the notice required by subparagraph one of this paragraph by first class mail to the support obligor's last known address or such other place where the support obligor is likely to receive notice by first class mail. Forty-five days after the date of such notice, if the support obligor has not challenged the determination of the support collection unit pursuant to subparagraph one of paragraph (d) of this subdivision or if the support obligor has failed to satisfy the arrears, the department shall notify the department of taxation and finance that the support obligor's support arrearage are authorized to be collected as prescribed in subparagraph one of this paragraph.

(3) Notwithstanding the requirements of this subdivision, no notice shall be issued by the department pursuant to subparagraph one of this paragraph to a support obligor from whom support payments are being received by the support collection unit as a result of an income execution or an income deduction order issued pursuant to section five thousand two hundred forty-one or five thousand two hundred forty-two of the civil practice law and rules.

(c) The notice provided to a support obligor by the department pursuant to paragraph (b) of this subdivision shall contain the caption of the order of support, the date the order of support was entered, the court in which it was entered, the amount of the periodic payments directed, and the amount of arrears. In addition, the notice shall include:

(1) a statement that unless the support arrears are satisfied within forty-five days after the date of the notice, the department of taxation and finance will be notified that they are authorized to commence collection action unless the support obligor challenges the support collection unit's determination as set forth in paragraph (d) of this subdivision within forty-five days of the date of such notice; a statement of the manner in which the support obligor may challenge the determination, and a statement that if the support obligor challenges the determination, a review will be completed by the support collection

unit within seventy-five days of the date of the notice;

(2) a statement that if the support obligor does not challenge the support collection unit's determination then the department of taxation and finance shall be notified that they are authorized to commence collection action unless the support obligor contacts the support collection unit to arrange for full payment of the arrears;

(3) the address and telephone number of the support collection unit that the support obligor may contact to request information about a challenge to the determination of the support collection unit;

(4) a statement that the collection actions by the department of taxation and finance is authorized to continue until the support obligor pays the support arrears; and

(5) a statement printed in boldface type that the support obligor's intentional submission of false written statements to the support collection unit for the purpose of frustrating or defeating the lawful enforcement of support obligations is punishable pursuant to section 175.35 of the penal law.

(d) A support obligor who has received a notice that his or her support arrearage shall be referred to the department of taxation and finance for collection action may avoid such action by making payment of all arrears to the support collection unit; providing documentation that shows the support obligor is receiving public assistance, medical assistance, food stamps or supplemental security income; or providing to the support collection unit the documentation sufficient for the support collection unit to determine:

(1) an error in the calculation of the obligor's support arrears which would render the obligor ineligible for collection by the department of taxation and finance; or

(2) a mistake in the identity of the obligor showing that the individual making the challenge is not the obligor identified by the department; or

(3) the absence of an underlying court order for support pursuant to which the obligor's arrears gave rise to eligibility for collection action on such arrears by the department of taxation and finance.

16. Bureaus of special hearings; child support unit. (a) The department is authorized to establish a bureau of special hearings;

child support unit solely for the purposes of providing administrative law judges to decide objections to the determination of a support collection unit to refer an obligor's arrears to the department of taxation and finance for collection pursuant to subdivision nineteen of section one hundred eleven-h of this title. The administrative law judges employed by the unit shall serve exclusively within the unit and shall not be utilized for any purpose other than those described in this subdivision and shall be salaried employees of the department and shall not be removed from such unit except for cause.

(b) The unit shall review a support collection unit's denial of a challenge made by a support obligor pursuant to paragraph two of subdivision nineteen of section one hundred eleven-h of this title if objections thereto are filed by a support obligor who has received notice that the department intends to notify the department of taxation and finance to collect such support obligor's support arrears. Specific written objections to a support collection unit's denial must be submitted by the support obligor to the unit within thirty days of the date of the notice of the support collection unit's denial. A support obligor who files such objections shall serve a copy of the objections upon the support collection unit, which shall have ten days from such service to file a written rebuttal to such objections and a copy of the record upon which the support collection unit's denial was made, including all documentation submitted by the support obligor. Proof of service shall be filed with the unit at the time of filing of objections and any rebuttal. The unit's review shall be based solely upon the record and submissions of the support obligor and the support collection unit upon which the support collection unit's denial was made. Within fifteen days after the rebuttal, if any, is filed, an administrative law judge of the unit shall (i) deny the objections and remand to the support collection unit or (ii) affirm the objections if the administrative law judge finds the determination of the support collection unit is based upon an erroneous determination of fact by the support collection unit. Such decision shall pertain solely to the mistaken identity of the obligor, a prejudicial error in the calculation of the obligor's arrears, the obligor's financial exemption from collection of support arrears by the department of taxation and finance or the absence of an underlying court order establishing arrears to

support eligibility for such enforcement. Upon an affirmation of the objections the administrative law judge shall direct the support collection unit not to notify the department of taxation and finance of their authority to collect the support obligor's arrears. Provisions set forth in this subdivision relating to procedures for hearing objections by the unit shall apply solely to such cases and not affect or modify any other procedure for review or appeal of administrative enforcement of child support requirements. The decision of the administrative law judge pursuant to this section shall be final and not reviewable by the commissioner, and shall be reviewable only pursuant to article seventy-eight of the civil practice law and rules.

17. Special services for review and adjustment. The department shall develop procedures for and require local social services districts to dedicate special staff to the review and adjustment of child support orders entered prior to September fifteenth, nineteen hundred eighty-nine on behalf of children in receipt of public assistance or child support services pursuant to section one hundred eleven-g of this title. Such review and adjustment shall be performed pursuant to subdivisions twelve, thirteen, fourteen, fifteen and sixteen of section one hundred eleven-h of this title. All such cases shall be reviewed and if necessary adjusted no later than December thirty-first, two thousand.

§ 111-c. Functions, powers and duties of social services officials.

1. Each social services district shall establish a single organizational unit which shall be responsible for such district's activities in assisting the state in the location of absent parents, establishment of parentage and enforcement and collection of support in accordance with the regulations of the department.

2. Each social services district shall:

a. obtain assignments to the state and to such district of support rights of each applicant for or recipient of public assistance required to execute such an assignment as a condition of receiving assistance;

b. report to the state all recipients of public assistance with respect to whom a parent has been reported absent from the household;

c. obtain information regarding the income and resources of absent parents whose whereabouts are known, and shall have access to the statement of net worth filed pursuant to section four hundred twenty-four-a of the family court act and supporting documentation in any case where support collection services are being provided as may be necessary to ascertain their ability to support or contribute to the support of their dependents;

d. enforce support obligations owed to the state and to the social services district pursuant to subdivision two of section one hundred eleven-b of this title; and disburse amounts collected as support payments in accordance with the provisions of this chapter and the regulations of the department, including the disbursement to the family in receipt of public assistance of up to the first one hundred dollars for one child, and up to the first two hundred dollars for two or more children, collected as current support;

e. make periodic reports and perform such other functions in accordance with the regulations of the department as may be necessary to assure compliance with federal child support program requirements.

f. confer with a potential respondent, respondent or other interested person in a proceeding under article four, five, five-A or five-B of the family court act in an attempt to obtain support payments from such potential respondent or respondent;

g. obtain from respondent, when appropriate and in accordance with the procedures established by section one hundred eleven-k of this chapter, an acknowledgement of parentage or an agreement to make support payments, or both;

h. report periodically to consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) information regarding past-due support owed by the parent owing support.

Such information must be made available whenever a parent who owes past-due support, and shall indicate the name of the parent and the amount of the delinquency. However, such information shall not be made available to (i) a consumer reporting agency that the office determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity that has not furnished evidence satisfactory to the office that the entity is a consumer reporting agency. In determining whether a consumer reporting agency lacks sufficient capability to systematically and timely make accurate use of such information, the office may require such agency to demonstrate its ability to comply with the provisions of section three hundred eighty-j of the general business law and any other requirements the office may prescribe by regulation. A social services official, at least ten days prior to making the information available to a consumer reporting agency, must provide notice to the parent who owes the support informing such parent of the proposed release of the information to the consumer reporting agency and informing such parent of the opportunity to be heard and the methods available for contesting the accuracy of the information.

3. Notwithstanding the foregoing, the social services official shall not be required to establish the parentage of any child born out-of-wedlock, or to secure support for any child, with respect to whom such official has determined that such actions would be detrimental to the best interests of the child, in accordance with procedures and criteria established by regulations of the department consistent with federal law.

4. a. A social services district represents the interests of the district in performing its functions and duties as provided in this title and not the interests of any party. The interests of a district shall include, but are not limited to, establishing parentage, and establishing, modifying and enforcing child support orders.

b. Notwithstanding any other provision of law, the provision of child support services pursuant to this title does not constitute nor create an attorney-client relationship between the individual receiving

services and any attorney representing or appearing for the district. A social services district shall provide notice to any individual requesting or receiving services that the attorney representing or appearing for the district does not represent the individual and that the individual has a right to retain his or her own legal counsel.

c. A social services district may appear in any action to establish parentage, or to establish, modify, or enforce an order of support when an individual is receiving services under this title.

§ 111-d. State reimbursement. 1. The provisions of section one hundred fifty-three of this chapter shall be applicable to expenditures by social services districts for activities related to the establishment of paternity of children born out-of-wedlock, the location of deserting parents and the enforcement and collection of support obligations owed to recipients of aid to dependent children and persons receiving services pursuant to section one hundred eleven-g of this title.

2. The local share of expenditures incurred by the department for the provision of centralized collection and disbursement services pursuant to section one hundred eleven-h of this title shall be charged back to social services districts. The local share shall be fifty per centum of the amount expended by the department after first deducting therefrom any federal funds properly received or to be received on account thereof; provided, however, that a social services district's share of the costs related to the centralized collection and disbursement functions shall not exceed those incurred for the year immediately preceding implementation of such functions, except to the extent to which those costs would have increased had centralization of collection and disbursement functions not occurred.

§ 111-e. Reimbursement to the state. 1. A share of any support payments collected by the social services official, less any amount disbursed to the family receiving family assistance, shall, subject to section one hundred eleven-f, be paid to the state as reimbursement

toward the amount contributed by the state and federal governments to assistance furnished to such family. Such share shall bear the same ratio to the amounts collected as the state and federal funds bear to assistance granted.

2. Whenever one social services district makes collections on behalf of a person or family for whom another social services district or another state is responsible for providing assistance, the amount collected shall be paid to the district or such other state responsible for providing such assistance, in accordance with the regulations of the department.

§ 111-f. Federal incentives. The department is authorized to distribute to local districts the full amount of federal incentive payments received under title IV-D of the federal social security act.

§ 111-g. Availability of paternity and support services. 1. The office of temporary and disability assistance and the social services districts, in accordance with the regulations of the office of temporary and disability assistance, shall make services relating to the establishment of paternity and the establishment and enforcement of support obligations available to persons not receiving family assistance upon application by such persons. Such persons must apply by (i) completing and signing a form as prescribed by the office of temporary and disability assistance, or (ii) filing a petition with the court or applying to the court in a proceeding for the establishment of paternity and/or establishment and/or enforcement of a support obligation, which includes a statement signed by the person requesting services clearly indicating that such person is applying for child support enforcement services pursuant to this title.

2. The office of temporary and disability assistance may, by regulation, require payment of an application fee for such services and the deduction of costs in excess of such fee from amounts collected on behalf of such persons.

3. (a) A person who is receiving child support services pursuant to this section who has never received assistance pursuant to title IV-A of the federal social security act shall be subject to an annual service fee of thirty-five dollars for each child support case if at least five hundred fifty dollars of support has been collected in the federal fiscal year. Where a custodial parent has children with different noncustodial parents, the order payable by each noncustodial parent shall be a separate child support case for the purpose of imposing an annual service fee. The fee shall be deducted from child support payments received on behalf of the individual receiving services.

(b) In international cases under section 454(32) of the federal social security act which meet the criteria for imposition of the annual service fee under paragraph (a) of this subdivision, the annual service fee shall be imposed but may not be collected from the country requesting services or a person living in another country unless permitted by federal law or regulation.

§ 111-h. Support collection unit. 1. Each social services district shall establish a support collection unit in accordance with regulations of the department to collect, account for and disburse funds paid pursuant to any order of child support or child and spousal support issued under the provisions of section two hundred thirty-six or two hundred forty of the domestic relations law, or article four, five, five-A or five-B of the family court act; provided however, that the department, subject to availability of funds, shall furnish centralized collection and disbursement services for and on behalf of each social services district. Until such time as the department performs collection and disbursement functions for a particular social services district, that social services district shall continue to perform those functions.

* 2. The support collection unit shall inform the petitioner and respondent of any case in which a required payment has not been made within two weeks after it was due and shall assist in securing voluntary compliance with such orders or in preparation and submission of a petition for a violation of a support order. Upon the written request of the debtor, the support collection unit shall issue an income execution

as provided in section fifty-two hundred forty-one of the civil practice law and rules, except that the provisions of subdivisions (d) and (e) thereof shall not apply. Upon receipt of written revocation of such request, the support collection unit shall notify the employer or income payor that the levy is no longer effective, and the execution shall be returned.

* NB There are 2 sb 2's

* 2. The support collection unit shall establish a system that will allow it to inform the petitioner and respondent of any case in which a required payment has not been made within two weeks after it was due and to assist in securing voluntary compliance with such orders or in preparation and submission of a petition for a violation of a support order, and shall implement such system no later than July first, nineteen hundred seventy-eight based on a plan submitted to and approved by the department on or before December first, nineteen hundred seventy-seven.

* NB Expired January 1, 1978 (There are 2 sb 2's)

3. The support collection unit shall require that a person applying for child support enforcement services provide his or her name, address and social security number and disclose whether he or she is in receipt of safety net assistance or family assistance; provided, however, that a social security number may be required only where permitted under federal law.

4. Any and all moneys paid into the support collection unit pursuant to an order of support made under the family court act or the domestic relations law, where the petitioner is not a recipient of public assistance, shall upon payment into such support collection unit be deemed for all purposes to be the property of the person for whom such money is to be paid.

5. Except as provided in subdivision six of this section, any funds paid to a support collection unit established by a social services district which have not been disbursed after two years of diligent efforts to locate the person entitled to such funds shall be paid to the state comptroller in accordance with subdivision seven of this section

unless information has been received that is likely to lead to the location of the person who is entitled to such funds; provided, however, where the support collection unit determines that the person entitled to the funds is deceased and cannot locate an estate for the person entitled to the funds, or the estate does not claim the funds, such funds may be paid to the state comptroller in accordance with subdivision seven of this section without two years of diligent efforts.

6. Any funds paid to a support collection unit established by a social services district for which the remitter of such funds has not provided sufficient identifying information to associate the funds with an existing or previously existing child support account, and such information cannot be determined after diligent efforts, shall be paid to the state comptroller in accordance with subdivision seven of this section.

7. In the month of April, on or before the tenth day thereof, such payment shall be delivered to the state comptroller pursuant to section thirteen hundred eighteen of the abandoned property law, and shall be accompanied by a written report, affirmed as true and accurate under the penalty of perjury, classified as the state comptroller shall prescribe, setting forth: (a) the names and last known addresses, if any, of the persons entitled to receive such abandoned property; (b) the title of any proceeding relating to such abandoned property; and (c) such other identifying information as the state comptroller may require.

8. Banks and other fiduciary institutions are authorized and required to report to the support collection unit, when so requested, full information relative to any fund therein deposited by a petitioner or respondent in a proceeding under section two hundred thirty-six or two hundred forty of the domestic relations law or article five-B of the family court act, where there is an order of support payable through the support collection unit or article four, five or five-A of the family court act.

9. Employers are authorized and required to report to the support collection unit, when so requested, full information as to the earnings

of a petitioner or respondent in a proceeding under section two hundred thirty-six or two hundred forty of the domestic relations law or article five-B of the family court act, where there is an order of support payable through the support collection unit or article four, five, five-A or five-B of the family court act. Employers also are authorized and required to report to the support collection unit, when so requested, information relating to any group health plans available for the provision of care or other medical benefits by insurance or otherwise for the benefit of the employee and/or the child or children for whom such parties are legally responsible for support.

10. The support collection unit is authorized and required to report to the family court, when so requested, full information relative to amounts paid or any arrearages by a respondent in a proceeding under articles four, five, five-A or article five-B of the family court act.

11. The department may provide for the performance of the collection and disbursement functions of the support collection units by contract with a fiscal agent. For purposes of any reference to support collection unit in this chapter or any other law, the fiscal agent under contract with the department shall be deemed to be part of all support collection units for which the fiscal agent performs collection and disbursement functions.

12. The support collection unit shall undertake a public service campaign as soon as practicable to inform citizens of the possibility of driver, business and professional license suspension for support enforcement.

13. (1) A support obligor may challenge in writing the correctness of the determination of the support collection unit pursuant to this section and section one hundred seventy-one-i of the tax law that the obligor's arrearage should be collected through the department of taxation and finance, and in support of the challenge may submit documentation demonstrating mistaken identity, error in calculation of arrears, financial exemption from such collection, the absence of an underlying court order establishing arrears to support such

determination. Such documents may include a copy of the order of support pursuant to which the obligor claims to have made payment, other relevant court orders, copies of cancelled checks, receipts for support payments, pay stubs or other documents identifying wage withholding, proof of identity, and like documents. The support collection unit shall review the documentation submitted by the support obligor, shall adjust the support obligor's account if appropriate, and shall notify the support obligor of the results of the review initiated in response to the challenge within seventy-five days from the date of the notice required. If the support collection unit's review indicates that the determination to refer to the department of taxation and finance for collection was correct, the support collection unit shall notify the support obligor of the results of the review and that the support obligor has thirty days from the date of such notice to satisfy the full amount of the arrears. If the support obligor fails to do so, the support collection unit shall notify the department of taxation and finance that they are authorized to commence collection of the arrears. The support obligor shall be further notified that if the support obligor files objections to the review determination of the support collection unit with the bureau of special hearings; child support unit of the department pursuant to subdivision sixteen of section one hundred eleven-b of this title, and serves these objections on the support collection unit within thirty days from the date of notice denying the challenge, the support collection unit shall not notify the department of taxation and finance of their authority to collect the arrearages until fifteen days after receipt of a decision by the administrative law judge pursuant to such section.

(2) A support obligor may within thirty days of the date of notice denying his or her challenge by the support collection unit file objections to such denial with the bureau of special hearings; child support unit of the department which shall review the support collection unit's determination to refer the obligor's case to the department of taxation and finance for collection pursuant to subdivision sixteen of section one hundred eleven-b of this title. If the support obligor timely files such objections with such bureau the support collection unit shall not notify the department of taxation and finance of their authority to collect the arrearages until fifteen days after entry of an

order by the administrative law judge denying the objections.

14. If the support obligor is required to participate in work programs pursuant to section four hundred thirty-seven-a of the family court act, and the court enters an order of support on behalf of the persons in receipt of public assistance, the support collection unit shall not file a petition to increase the support obligation for twelve months from the date of entry of the order of support if the support obligor's income is derived from participation in such programs.

§ 111-i. Child support standards. 1. Each social services district shall ascertain the ability of an absent parent to support or contribute to the support of his or her children, in accordance with the statewide child support standards as set forth in subdivision one of section four hundred thirteen of the family court act.

2. (a) The commissioner shall publish annually a child support standards chart. The child support standards chart shall include: (i) the revised poverty income guideline for a single person as reported by the federal department of health and human services; (ii) the revised self-support reserved as defined in section two hundred forty of the domestic relations law; (iii) the dollar amounts yielded through application of the child support percentage as defined in section two hundred forty of the domestic relations law and section four hundred thirteen of the family court act; and (iv) the combined parental income amount.

(b) The combined parental income amount to be reported in the child support standards chart and utilized in calculating orders of child support in accordance with subparagraph two of paragraph (c) of subdivision one of section four hundred thirteen of the family court act and subparagraph two of paragraph (c) of subdivision one-b of section two hundred forty of the domestic relations law as of January thirty-first, two thousand fourteen shall be one hundred forty-one thousand dollars; provided, however, beginning March first, two thousand sixteen and every two years thereafter, the combined parental income amount shall increase by the sum of the average annual percentage

changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of labor bureau of labor statistics for the prior two years multiplied by the current combined parental income amount and then rounded to the nearest one thousand dollars.

(c) The commissioner shall publish the child support standards chart on an annual basis by April first of each year and in no event later than forty-five days following publication of the annual poverty income guideline for a single person as reported by the federal department of health and human services.

§ 111-j. Interception of unemployment insurance benefits. 1. (a) The department shall determine on a periodic basis whether any individual receiving unemployment insurance benefits pursuant to article eighteen of the state's labor law owes child support obligations which are being enforced by the department or the child support enforcement unit of a social services district and shall enforce any child support obligations which are owed by such individual but are not being met through an agreement with such individual to have specific amounts withheld from such benefits otherwise payable to such individual and by submitting a copy of such agreement to the New York state department of labor.

(b) In the absence of such an agreement, the department shall enforce any such child support obligations as authorized by the court in any order establishing such obligations and as otherwise provided by law.

2. Any amounts of unemployment insurance benefits deducted, withheld and paid over by the department of labor pursuant to section five hundred ninety-six of the labor law shall be treated as if it were paid to the person entitled to such compensation and paid by such person to the department or appropriate child support collection unit toward satisfaction of such person's child support obligations. Each agency or district receiving payments deducted by the department of labor shall reimburse that department for the administrative costs attributable thereto.

§ 111-k. Procedures relating to acknowledgments of parentage, agreements to support, and genetic tests. 1. A social services official or his or her designated representative who confers with a potential respondent or respondent, hereinafter referred to in this section as the "respondent", the mother of a child born out of wedlock and any other interested persons, pursuant to section one hundred eleven-c of this title, may obtain:

(a) an acknowledgment of parentage of a child, as provided for in article five-B or section five hundred sixteen-a of the family court act, by a written statement, witnessed by two people not related to the signator or as provided for in section four thousand one hundred thirty-five-b of the public health law. Prior to the execution of such acknowledgment by the child's mother and the respondent, they shall be advised, orally, which may be through the use of audio or video equipment, and in writing, of the consequences of making such an acknowledgment. Upon the signing of an acknowledgment of parentage pursuant to this section, the social services official or his or her representative shall file the original acknowledgment with the registrar.

(b) an agreement to make support payments as provided in section four hundred twenty-five of the family court act. Prior to the execution of such agreement, the respondent shall be advised, orally, which may be through the use of audio or video equipment, and in writing, of the consequences of such agreement, that the respondent can be held liable for support only if the family court, after a hearing, makes an order of support; that respondent has a right to consult with an attorney and that the agreement will be submitted to the family court for approval pursuant to section four hundred twenty-five of the family court act; and that by executing the agreement, the respondent waives any right to a hearing regarding any matter contained in such agreement.

2. (a) When the paternity of a child is contested, a social services official or designated representative may order the mother, the child, and the alleged father to submit to one or more genetic marker or DNA tests of a type generally acknowledged as reliable by an accreditation body designated by the secretary of the federal department of health and human services and performed by a laboratory approved by such an

accreditation body and by the commissioner of health or by a duly qualified physician to aid in the determination of whether or not the alleged father is the father of the child. The order may be issued prior or subsequent to the filing of a petition with the court to establish paternity, shall be served on the parties by certified mail, and shall include a sworn statement which either (i) alleges parentage and sets forth facts establishing a reasonable possibility of the requisite sexual contact between the parties, or (ii) denies parentage and sets forth facts establishing a reasonable possibility that the party is not the father. The parties shall not be required to submit to the administration and analysis of such tests if they sign a voluntary acknowledgment of parentage in accordance with paragraph (a) of subdivision one of this section, or if there has been a written finding by the court that it is not in the best interests of the child on the basis of res judicata, equitable estoppel, the child was conceived through assisted reproduction or the presumption of legitimacy of a child born to a married person.

(b) The record or report of the results of any such genetic marker or DNA test may be submitted to the family court as evidence pursuant to subdivision (e) of rule forty-five hundred eighteen of the civil practice law and rules where no timely objection in writing has been made thereto.

(c) The cost of any test ordered pursuant to this section shall be paid by the social services district provided however, that the alleged father shall reimburse the district for the cost of such test at such time as the alleged father's parentage is established by a voluntary acknowledgment of parentage or an order of filiation. If either party contests the results of genetic marker or DNA tests, an additional test may be ordered upon written request to the social services district and advance payment by the requesting party.

(d) The parties shall be required to submit to such tests and appear at any conference scheduled by the social services official or designee to discuss the notice of the allegation of paternity or to discuss the results of such tests. If the alleged genetic parent fails to appear at any such conference or fails to submit to such genetic marker or DNA tests, the social services official or designee shall petition the court to establish parentage, provide the court with a copy of the records or

reports of such tests if any, and request the court to issue an order for temporary support pursuant to section five hundred forty-two of the family court act.

3. Any reference to an acknowledgment of paternity in any law of this state or any similar instrument signed in another state consistent with the law of that state shall be interpreted to mean an acknowledgment of parentage executed pursuant to this section, section four thousand one hundred thirty-five-b of the public health law or signed in another state consistent with the law of that state.

§ 111-m. Agreement relating to information obtained by the state directory of new hires. The department, through the commissioner, shall enter into the agreement provided for in section one hundred seventy-one-h of the tax law, and shall take such other actions as may be necessary to carry out the agreement provided for in such section for matching recipient records of public assistance and of the child support enforcement program with information provided by employers to the state directory of new hires for the purposes of verifying eligibility for such public assistance programs and for the administration of the child support enforcement program.

§ 111-n. Review and cost of living adjustment of support orders. 1. Orders subject to review. In accordance with the timeframes set forth in subdivision three of this section, the support collection unit shall conduct a review for adjustment purposes of:

(a) all orders of support being enforced pursuant to this title on behalf of persons in receipt of family assistance; and

(b) those orders of support being enforced pursuant to this title on behalf of persons not in receipt of family assistance, for which a request for a cost of living adjustment review has been received from either party to the order.

2. Definitions. For purposes of this section, the following definitions shall be used:

(a) "Adjusted child support obligation amount" shall mean the sum of the cost of living adjustment and the support obligation amount contained in the order under review.

(b) "Adjusted order" shall mean an order issued by the support collection unit reflecting a change to the obligation amount of the most recently issued order of support made on behalf of a child in receipt of family assistance or child support enforcement services pursuant to section one hundred eleven-g of this title.

(c) "Cost of living adjustment" shall mean the amount by which the support obligation is changed as the result of a review, and shall be determined based upon annual average changes to the consumer price index for all urban consumers (CPI-U), as published by the United States department of labor bureau of labor statistics, for the years preceding the year of the review, as follows:

(1) Identify the CPI-U "percent change from the previous annual average" for each year preceding the year of the review, beginning with and including the later of the year in which the most recent order was issued or nineteen hundred ninety-four, and calculate the sum of the percentages for those years.

(2) Where the sum as calculated pursuant to subparagraph one of this paragraph equals or exceeds ten percent, multiply the support obligation in the order under review by such percentage. The product is the cost of living adjustment.

(d) "Order" shall mean an original, modified, or adjusted order of support; or, after a hearing in response to objections to a cost of living adjustment as set forth in an adjusted order of support, the order of support reflecting the application of the child support standards pursuant to section two hundred forty of the domestic relations law or section four hundred thirteen of the family court act, or an order of no adjustment.

(e) "Review" shall mean the calculation of the cost of living adjustment and the adjusted child support obligation amount by the support collection unit for the most recently issued order of support made on behalf of a child in receipt of family assistance, or child support enforcement services pursuant to section one hundred eleven-g of this title.

3. Timeframes. The review of support orders for cost of living adjustment purposes shall be conducted by the support collection unit in accordance with the following timeframes:

(a) For all orders of support on behalf of persons in receipt of family assistance, a review shall be conducted during the second calendar year following the year in which the order was issued, or the current year, whichever is later. Any cost of living adjustment resulting from a review shall be effective sixty days following the date of the adjusted order, or twenty-four months after the date of the order under review, whichever is later.

(b) For all orders of support on behalf of persons not in receipt of family assistance, a review shall be conducted during the second calendar year following the year in which the order was issued, or the current year, whichever is later; provided, however, that no such review shall occur unless a request for such review has been received from a party to the order. Any cost of living adjustment resulting from a review shall be effective sixty days following the date of the adjusted order, or twenty-four months after the date of the order under review, whichever is later.

4. Adjustment process. (a) A cost of living adjustment shall be made by the support collection unit with respect to each order of support under review, if the sum of the annual average changes of the consumer price index for all urban consumers (CPI-U), as published by the United States department of labor bureau of labor statistics, is ten percent or greater. The child support obligation amount, as increased by the cost of living adjustment calculated during the review, shall be rounded to the nearest dollar. In the event that the sum of the annual average changes of the CPI-U is less than ten percent, no cost of living adjustment shall occur.

(b) Upon the conclusion of the adjustment review, the support collection unit shall issue and send an adjusted order by first class mail to the parties. The cost of living adjustment and the adjusted child support obligation amount as calculated by the review shall be reflected in the adjusted order. The child support obligation amount contained in the adjusted order shall be due and owing on the date the first payment is due under the terms of the order of support which was

reviewed and adjusted occurring on or after the effective date of the adjusted order.

(c) The support collection unit shall provide a copy of the adjusted order to the court which issued the most recent order of support, which shall append it to the order.

5. Objections. (a) Where there is an objection to a cost of living adjustment, either party or the support collection unit shall have thirty-five days from the date of mailing of the adjusted order by the support collection unit to submit to the court identified thereon written objections, requesting a hearing on the adjustment of the order of support.

(b) If objections are submitted timely to the court, the cost of living adjustment shall not take effect, and a hearing shall be scheduled by the court. The hearing shall be conducted and a determination made by the court pursuant to section two hundred forty-c of the domestic relations law or section four hundred thirteen-a of the family court act.

(c) Where no objection has been timely raised to a cost of living adjustment as reflected in an adjusted order, such adjusted order shall become final without further review by the court or any judge or support magistrate thereof.

6. Adjusted order - form. The adjusted order shall contain the following information:

(a) the caption of the order of support subject to the review, the date of such order, and the court in which it was entered;

(b) the identification, telephone number, and address of the support collection unit which conducted the review;

(c) the cost of living adjustment and the adjusted child support obligation amount as calculated during the review of the order, and a statement that such amount shall be due and owing on the date the first payment is due under the term of the order of support which was reviewed and adjusted, occurring on or after the effective date of the adjusted order;

(d) the definition of cost of living adjustment;

(e) a statement that the child support obligation amount, as increased

by the cost of living adjustment, has been rounded to the nearest dollar;

(f) a statement that all other provisions of the order of support which was reviewed and adjusted remain in full force and effect;

(g) a statement that the application of a cost of living adjustment in no way limits, restricts, expands, or impairs the rights of any party to file for a modification of a child support order as otherwise provided by law;

(h) a statement that where either party objects to the cost of living adjustment, the party has the right to be heard by the court and to present evidence to the court which the court will consider in adjusting the child support order in compliance with section four hundred thirteen of the family court act or section two hundred forty of the domestic relations law, known as the child support standards act; provided, however, that written objections are filed with the court within thirty-five days from the date the adjusted order was mailed by the support collection unit; that when filing objections the objecting party should attach a copy of the adjusted order, if available; and

(i) a statement that where any party fails to provide, and update upon any change, the support collection unit with a current address to which an adjusted order can be sent, the support obligation amount contained therein shall become due and owing on the date the first payment is due under the order of support which was reviewed and adjusted occurring on or after the effective date of the adjusted order, regardless of whether or not the party has received a copy of the adjusted order.

7. Notice of right to review. On or after the first day of January, nineteen hundred ninety-eight, any order of support twenty-four or more months old which was issued on behalf of a child in receipt of family assistance or child support enforcement services pursuant to section one hundred eleven-g of this title, is eligible for a cost of living adjustment every two years. The support collection unit shall notify the parties to the order of their right to make a written request to the support collection unit for a cost of living adjustment of such support order. Such notice shall contain the amount of the cost of living adjustment, the amount of the adjusted child support obligation, the applicable CPI-U used in the calculation of that amount, the address and

telephone number of the support collection unit where assistance can be obtained in commencing an adjustment review, and other information deemed necessary and relevant by the department, and shall be sent to the parties by first class mail at their last known address, and shall contain a reply form and envelope with postage pre-paid. The support collection unit shall provide the notice described herein not less than once every two years.

§ 111-o. Data matches with financial institutions. The department or a social services district, through the commissioner, is authorized to enter into agreements with financial institutions as provided for in subdivision two of section four of the banking law and subsection (e) of section three hundred twenty of the insurance law, and is authorized to furnish to and receive from those and any other financial institutions, as defined in paragraph one of subdivision (d) of section four hundred sixty-nine A of the federal social security act, such information as may be necessary to carry out the agreements provided for in section four of the banking law and section three hundred twenty of the insurance law, for the enforcement of child support orders.

§ 111-p. Authority to issue subpoenas. The department or the child support enforcement unit coordinator or support collection unit supervisor of a social services district, or his or her designee, or another state's child support enforcement agency governed by title IV-D of the social security act, shall be authorized, whether or not a proceeding is currently pending, to subpoena from any person, public or private entity or governmental agency, and such person, entity or agency shall provide any financial or other information needed to establish paternity and to establish, modify or enforce any support order. If a subpoena is served when a petition is not currently pending, the supreme court or a judge of the family court may hear and decide all motions relating to the subpoena. If the subpoena is served after a petition has been served, the court in which the petition is returnable shall hear and decide all motions relating to the subpoena. Any such person, entity, or agency shall provide the subpoenaed information by the date

as specified in the subpoena. Such subpoena shall be subject to the provisions of article twenty-three of the civil practice law and rules. The department or district may impose a penalty for failure to respond to such information subpoenas pursuant to section twenty-three hundred eight of the civil practice law and rules.

§ 111-q. Voiding of fraudulent transfers of income or property. The department or a social services district, or its authorized representative, after obtaining information that a debtor has transferred income, property or other assets to avoid payment to a child support creditor shall, pursuant to article ten of the debtor and creditor law (1) commence a proceeding to void such transfer; or (2) obtain a settlement that is in the best interests of the child support creditor. Provided, however, that no settlement shall reduce or annul any arrears of child support which have accrued prior to the date of settlement.

§ 111-r. Requirement to respond to requests for information. All employers, as defined in section one hundred eleven-m of this article (including for-profit, not-for-profit and governmental employers), are required to provide information promptly on the employment, compensation and benefits of any individual employed by such employer as an employee or contractor, when the department or a social services district or its authorized representative, or another state's child support enforcement agency governed by title IV-D of the social security act, requests such information for the purpose of establishing paternity, or establishing, modifying or enforcing an order of support. To the extent feasible, such information shall be requested and provided using automated systems, and shall include, but is not limited to, information regarding the individual's last known address, date of birth, social security number, plans providing health care or other medical benefits by insurance or otherwise, wages, salaries, earnings or other income of such individual. Notwithstanding any other provision of law to the contrary, such officials are not required to obtain an order from any judicial or administrative tribunal in order to request or receive such

information. The department shall be authorized to impose a penalty for failure to respond to such requests of five hundred dollars for an initial failure and seven hundred dollars for the second and subsequent failure.

§ 111-s. Access to information contained in government and private records. 1. For the purpose of establishing paternity, or establishing, modifying or enforcing an order of support, the department or a social services district or its authorized representative, and child support enforcement agencies of other states established pursuant to title IV-D of the social security act, without the necessity of obtaining an order from any other judicial or administrative tribunal and subject to safeguards on privacy and information security, shall have access to information contained in the following records:

- (a) records of other state and local government agencies including:
 - (i) vital statistics (including records of marriage, birth and divorce);
 - (ii) state and local tax and revenue records (including information on residence address, employer, income and assets);
 - (iii) records concerning real and titled personal property;
 - (iv) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships and other business entities;
 - (v) employment security records;
 - (vi) records of agencies administering public assistance programs;
 - (vii) records of the department of motor vehicles; and
 - (viii) corrections records; and
- (b) certain records held by private corporations, companies, or other entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is being sought), consisting of:
 - (i) pursuant to an administrative subpoena authorized by section one hundred eleven-p of this title, the names, addresses, telephone numbers and dates of birth of such individuals, and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities companies and corporations, including, but not limited

to, cable television, gas, electric, steam, and telephone companies and corporations, as defined in section two of the public service law, doing business within the state of New York; and

(ii) information on such individuals held by financial institutions, including information regarding assets and liabilities.

2. Notwithstanding any other provision of law to the contrary, any government or private entity to which a request for access to information is directed pursuant to subdivision one of this section, is authorized and required to comply with such request. To the extent feasible, access to such information shall be requested and provided using automated systems. Any government or private entity which discloses information pursuant to this section shall not be liable under any federal or state law to any person for such disclosure, or for any other action taken in good faith to comply with this subdivision.

§ 111-t. Authority to secure assets. The department or a social services district or its authorized representative, or another state's child support enforcement agency governed by title IV-D of the social security act, for the purpose of collecting overdue support, shall be authorized in accordance with all applicable provisions of law, to secure assets otherwise due a support obligor by:

1. intercepting or seizing periodic or lump sum payments due such obligor from:

(a) a state or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(b) judgments, settlements and lottery winnings;

2. attaching and seizing assets of such obligors which are held in financial institutions;

3. attaching public and private retirement funds of such obligors; and

4. imposing liens against real and personal property owned by such

obligors; and where appropriate, forcing the sale of property owned by such obligors and distributing proceeds from the sale of such properties.

§ 111-u. Liens. 1. The office of temporary and disability assistance, or a social services district, or its authorized representative shall have a lien against real and personal property owned by a support obligor when such support obligor is or was under a court order to pay child support or combined child and spousal support to a support collection unit on behalf of persons receiving services under this title, and such obligor has accumulated support arrears/past due in an amount equal to or greater than the amount of support due pursuant to such order for a period of four months. Such lien shall incorporate unpaid support which accrues in the future.

2. For the purposes of determining whether a support obligor has accumulated support arrears/past due support for a period of four months, the amount of any retroactive support, other than periodic payments of retroactive support which are past due, shall not be included in the calculation of arrears/past due support pursuant to this section; however, if at least four months of support arrears/past due support have accumulated subsequent to the date of the court order, the entire amount of any retroactive support may be collected pursuant to the provisions of this subdivision or as otherwise authorized by law.

3. When the office of temporary and disability assistance, or a social services district, or its authorized representative on behalf of a person receiving services pursuant to this title determines that the requisite amount of child support is past due, it shall send, by first class mail, a notice of intent to file a lien to the support obligor. The obligor may assert a mistake of fact and shall have an opportunity to make a submission in support of the assertion. The assertion and any supporting papers shall be submitted within thirty-five days from the date a notice was mailed. Thereafter, the social services district shall determine the merits of the assertion, and shall notify the obligor of its determination within ninety days after notice to the obligor was

mailed.

4. If the social services district finds no mistake of fact exists or, the obligor fails to assert a mistake of fact within the thirty-five days, the social services district may file a notice of lien, which shall contain the caption of the support order and a statement of arrears and which shall constitute a lien on the property. The social services district shall not enforce its lien until after expiration of any applicable period for review of an administrative action or, if the obligor has initiated a proceeding pursuant to article seventy-eight of the civil practice law and rules, until completion of such review.

5. Filing of the notice of the lien shall be as provided in sections sixty-five and two hundred eleven of the lien law, article forty-six of the vehicle and traffic law, or as otherwise authorized by law.

6. Within five days before or thirty days after filing the notice of the lien, the social services district shall send by first class mail a copy of such notice upon the owner of the property.

§ 111-v. Confidentiality, integrity, and security of information. 1. The department, in consultation with appropriate agencies including but not limited to the New York state office for the prevention of domestic violence, shall by regulation prescribe and implement safeguards on the confidentiality, integrity, accuracy, access, and the use of all confidential information and other data handled or maintained, including data obtained pursuant to section one hundred eleven-o of this article and including such information and data maintained in the automated child support enforcement system. Such information and data shall be maintained in a confidential manner designed to protect the privacy rights of the parties and shall not be disclosed except for the purpose of, and to the extent necessary to, establish paternity, or establish, modify or enforce an order of support.

2. These safeguards shall include provisions for the following:

(a) Policies restricting access to and sharing of information and

data, including:

(1) safeguards against unauthorized use or disclosure of information relating to procedures or actions to establish paternity or to establish or enforce support;

(2) prohibitions against the release of information on the whereabouts of one party to another party against whom an order of protection with respect to the former party has been entered; and

(3) prohibitions against the release of information on the whereabouts of one party to another party if the department has reason to believe that the release of the information may result in the physical or emotional harm to the former party.

(b) Systems controls to ensure strict adherence to policies.

(c) Monitoring of access to and use of the automated system to prevent unauthorized access or use.

(d) Training in security procedures for all staff with access, and provisions of information regarding these requirements and penalties.

(e) Administrative penalties for unauthorized access, disclosure, or use of confidential data.

3. If any person discloses confidential information in violation of this section, any individual who incurs damages due to the disclosure may recover such damages in a civil action.

4. Any person who willfully releases or permits the release of any confidential information obtained pursuant to this title to persons or agencies not authorized by this title or regulations promulgated thereunder to receive it shall be guilty of a class A misdemeanor.

5. The safeguards established pursuant to this section shall apply to staff of the department, local social services districts, and any contractor.

TITLE 6-B

SERVICES FOR ENFORCEMENT OF SUPPORT PROVIDED BY THE DEPARTMENT OF SOCIAL SERVICES

111-y. Spousal support; crediting of overpayments of tax to

past-due support.

111-z. Spousal and child support; crediting of overpayments of tax to past-due support.

§ 111-y. Spousal support; crediting of overpayments of tax to past-due support. 1. The department shall provide services for the crediting of overpayments of tax to past-due support, pursuant to section one hundred seventy-one-c of the tax law, which is owed to any current or former spouse entitled to enforce an order of support, who applies to the department for such services, if such spouse is not eligible to receive services pursuant to title six-A of this article. For purposes of this section, "order of support" means any final order, decree or judgment in a matrimonial action or family court proceeding, or any foreign support order, decree or judgment which is registered pursuant to article 5-B of the family court act which requires the payment of alimony, maintenance or support.

2. (a) An applicant for services under this section shall provide the department with the following:

(i) a certified transcript of a money judgment for a sum certain for arrears accrued under an order of support;

(ii) a sworn statement that the order of support is no longer subject to appellate judicial review and that the sum set forth as uncollected on the judgment is accurate;

(iii) the name and address of the applicant; and

(iv) the name, last known address and social security number of the person or entity owning past-due support against whom a judgment has been obtained.

(b) If an application for services is rejected by the department, the department shall inform the applicant in writing of the reason for such rejection.

3. An applicant for services under this section shall receive a pro rata share of the overpayment of tax, based on the amount of past-due support owed to such applicant as certified to the tax commission by the department pursuant to section one hundred seventy-one-c of the tax law,

in cases where the individual, estate or trust owing past-due support to such applicant owes past-due support to other persons or entities so certified to the tax commission by the department.

4. The department shall promulgate such regulations as are necessary to carry out the provisions of this section, including regulations as to the date by which an applicant for services under this section shall provide the department with the information and documentation required in subdivision two of this section.

§ 111-z. Spousal and child support; crediting of overpayments of tax to past-due support. 1. The department shall provide services for the crediting of overpayments of tax to past-due support, pursuant to section one hundred seventy-one-c of the tax law, which is owed to persons entitled to enforce an order of support, for persons not receiving public assistance who are eligible to receive services pursuant to title six-A of this article, but who do not receive such services. For purposes of this section, "order of support" shall mean any final order, decree or judgment in a matrimonial action or family court proceeding, or any foreign support order, decree or judgment which is registered pursuant to article five-B of the family court act which requires the payment of alimony, maintenance, support or child support.

2. (a) An applicant for services under this section shall provide the department with the following:

(i) a certified transcript of a money judgment for a sum certain for arrears accrued under an order of support;

(ii) a sworn statement that the order of support is no longer subject to appellate judicial review and that the sum set forth as uncollected on the judgment is accurate;

(iii) the name and address of the applicant; and

(iv) the name, last known address and social security number of the person or entity owing past-due support against whom a judgment has been obtained.

(b) If an application for services is rejected by the department, the department shall inform the applicant in writing of the reason for such

rejection.

(c) The department shall inform applicants for services under this section of the support collection and enforcement services available through the support collection units pursuant to title six-A of this article.

3. An applicant for services under this section shall receive a pro rata share of the overpayment of tax, based on the amount of past-due support owed to such applicant as certified to the tax commission by the department pursuant to section one hundred seventy-one-c of the tax law, in cases where the individual, estate or trust owing past-due support to such applicant owes past-due support to other persons or entities so certified to the tax commission by the department.

4. The department may charge an applicant for services under this section a fee based on cost, but not to exceed the lesser of twenty-five dollars or the amount of overpayment of tax received by the department. The department shall recover such fee from such overpayment and pay any balance to the applicant. The fee provided for herein shall not be a charge against the individual, estate or trust owing past-due support.

5. The department shall promulgate such regulations as are necessary to carry out the provisions of this section, including regulations as to the date by which an applicant for services under this section shall provide the department with the information and documentation required in subdivision two of this section.

TITLE 7

LOCAL PERSONNEL TRAINING; RESEARCH AND DEMONSTRATION PROJECTS; SPECIAL STATE REIMBURSEMENT

Section 112. Local personnel training.

113. Participation in research and demonstration projects.

114. Special state reimbursement.

115. Training and utilization of volunteers.

§ 112. Local personnel training. Each public welfare district shall make provision, with the assistance and cooperation of the department, for suitable training of employees of its welfare department. Such provision shall include such of the following as the department may approve or require for such district: employment of qualified training directors and/or teachers; the granting of scholarships and fellowships; continuing salaries of employees while undergoing training, pursuant to section thirty; contracting with approved schools, colleges and universities for courses of instruction and/or classes or special classes; sponsoring, conducting and participating in seminars, workshops and meetings and allowing or requiring attendance of selected employees; payment of stipends and expenses, within prescribed limits, of employees undergoing training.

§ 113. Participation in research and demonstration projects. Public welfare districts are authorized to sponsor, conduct and participate in the operation of such research and demonstration projects as the department may approve, for the purpose of reducing dependency and eliminating the causes thereof. Public welfare districts shall cooperate with the department in the conduct of such projects whenever the department shall request or require such participation and cooperation.

§ 114. Special state reimbursement. Any inconsistent provision of sections one hundred fifty-three, two hundred fifty-seven or other provisions of this chapter notwithstanding, expenditures made by public welfare districts for salaries of qualified training directors pursuant to section one hundred twelve and for salaries of employees while on educational leave pursuant to section thirty and one hundred twelve shall, if approved by the department, be subject to reimbursement by the state in accordance with the regulations of the department as follows:

there shall be paid to each such district

(a) the amount of federal funds, if any, properly received or to be

received on account of such expenditures;

(b) the full amount expended for such purposes, after first deducting therefrom any federal funds properly received or to be received on account thereof.

§ 115. Training and utilization of volunteers. Subject to the approval of the department, public welfare districts are authorized to sponsor and conduct programs for the recruitment, training and utilization of volunteers to assist welfare district employees in the performance of office duties and to aid in performing services in welfare districts including but not limited to the following:

- (a) friendly visiting of the indigent aged;
- (b) finding homes for foster children;
- (c) escorting and transporting recipients to clinics and other destinations;
- (d) aiding in location of improved housing;
- (e) teaching homemaking skills and aiding in budgeting and care of the household;
- (f) providing tutoring and other educational aid; and
- (g) giving information, screening requests and performing other services in waiting rooms of welfare centers.

TITLE 7-B

CHIEF EXECUTIVE OFFICERS OF LOCAL WELFARE

DEPARTMENTS: APPOINTMENT

Section 116. Chief executive officers of local welfare departments; qualifications; appointment and removal; term.

§ 116. Chief executive officers of local welfare departments; qualifications; appointment and removal; term. 1. Any inconsistent provision of law, notwithstanding, the position of the chief executive officer of a county or city social services department, whether referred to as commissioner or by other title, shall be in the non-competitive class of the civil service, except any which is or may hereafter be in

the competitive class. Appointments to such positions in the non-competitive class shall be for terms of five years and shall be made by the appropriate county or city body or officer. However, no person may be appointed to or serve in any such position who does not meet the minimum qualifications required therefor by the state commissioner of social services pursuant to section seventeen.

2. Any inconsistent provision of law, general, special or local, notwithstanding, the chief executive officer of a county or city social services department shall also be subject to removal or sanction in accordance with the provisions of section thirty-four of this chapter.

3. As used in subdivision one "the appropriate county or city body or officer" shall mean and refer:

(a) in the case of a county, to the board of supervisors thereof, except when the county has a county executive, county president, county manager or other officer or board authorized to appoint heads of administrative departments or the chief executive officer of the social services department, in which case it shall mean such executive, president, manager, other officer or board;

(b) in the case of a city, to the mayor, manager, other officer, or the board having authority to appoint department heads or the chief executive officer of the social services department.

ARTICLE 4

RESIDENCE AND REMOVAL

Section 117. State residence.

118. Qualification on residence.

118-c. Family court cases; state charges.

121. Removal of persons to another state or country.

122. Noncitizens.

§ 117. State residence. 1. Any person who shall reside in the state continuously for one year under the conditions hereinafter specified shall be deemed to have state residence. State residence so acquired

shall continue until such person shall have removed from the state and remained therefrom for one year; provided, however, that no person shall lose state residence by absence from the state while serving in the armed forces of the United States or in the United States merchant marine, or while attached to and serving with the armed forces of the United States and, provided further, that no member of the family of any such person shall lose state residence by absence from the state while living with or near such person during the period of such service and on account thereof.

2. An infant shall, at the time of birth, whether within or without the state, be deemed to have state residence if he is in the custody of both birth parents and either of them has state residence or if the birth parent having his custody has state residence. State residence so acquired by a child born within the state shall continue until the child shall have removed from the state and remained therefrom for one year. State residence so acquired by a child born without the state shall terminate when he becomes one year of age if he remains without the state during such year. For the purpose of this subdivision and section, a child born out of wedlock whose birth parents were living together on the date of his birth shall be deemed to have been in the custody of both his parents on such date if his birth father has acknowledged or been adjudicated to be such.

3. (a) Notwithstanding any other provision of law, no public assistance benefits shall be paid to or for any person who is not a resident of the state as provided in this article, except that assistance shall be provided to a person who is otherwise eligible during the first twelve months in the state at a rate not exceeding the higher of fifty percent of the amount otherwise payable or the standard of need applicable to the person under the laws of the state, if any, in which he or she resided immediately prior to arrival in this state, but under no circumstances may such allowances exceed the amounts payable to a resident under this chapter; and no assistance shall be provided for any noncitizen during the first twelve months such person resides in the United States, except as set forth in paragraph (b) of this subdivision and except persons domiciled in the state on the effective date of this

section, and except as otherwise required by federal law. For purposes of this section, the standard of payment applicable in another state shall refer to a schedule of comparative grants to be promulgated biennially, setting forth the amount of that state's maximum standard of payment with respect to each such program, if any, for each household size for any state which financially participates in or mandates a program under title IV-A of the federal social security act or a general assistance or disability assistance program.

(b) This subdivision shall not apply to any person entitled to federally funded refugee cash assistance under Title IV of the Immigration and Nationality Act or to any person participating in a project authorized under section 412(e) of the Immigration and Nationality Act.

§ 118. Qualification on residence. The continuous residence required to acquire state residence or to establish liability for payment for hospital or other institutional care shall not include any period during which the person was (a) a patient in a hospital, or

(b) an incarcerated individual of any public institution or any incorporated private institution, or

(c) if a child under the age of twenty-one years, in a boarding home under the care of an authorized agency, or

(d) residing on any military reservation.

If, however, the periods of residence immediately prior and subsequent to the period specified in a, b, c, or d, shall together equal the required period of residence, such person shall be deemed to have had the required continuous residence.

§ 118-c. Family court cases; state charges. In the event a child who is residing on any Native American reservation within the state is committed or placed by a court of competent jurisdiction as a delinquent, abused, neglected, or abandoned child, or person in need of supervision, or upon any ground specified in section three hundred eighty-four-b of this chapter, the state, shall reimburse the social services district from which the child was committed for the full cost

of care and maintenance of the child.

§ 121. Removal of persons to another state or country. 1. When any person who is cared for at the expense of the state or of any public welfare district has settlement or residence or otherwise belongs to or has legally responsible relatives able or friends willing to undertake the obligations to support him or to aid in supporting him in any other state or country, the department may furnish him with transportation to such state or country, provided, in its judgment the interest of the state and the welfare of such person will be thereby promoted.

2. The expense of such removal shall be paid from the state treasury on the audit and warrant of the comptroller pursuant to a verified account submitted by the department and in accordance with the provisions of paragraph d of subdivision one of section one hundred fifty-three of this chapter.

§ 122. Noncitizens. 1. Notwithstanding any law to the contrary, no person except a citizen or a noncitizen who has been duly naturalized as a citizen shall be eligible for additional state payments for aged, blind and disabled persons, family assistance, safety net assistance, services funded under title XX of the federal social security act, or medical assistance, subject to the following exceptions:

(a) The following persons shall, if otherwise eligible, receive benefits under such programs:

(i) a refugee who entered the United States within the previous five years with respect to benefits under the temporary assistance to needy families block grant program and the safety net assistance program and within the previous seven years with respect to medical assistance;

(ii) an asylee who was granted asylum within the previous five years with respect to benefits under the temporary assistance to needy families block grant program and the safety net assistance program and within the previous seven years with respect to medical assistance;

(iii) a person for whom deportation was withheld within the previous five years with respect to benefits under the temporary assistance to

needy families block grant program and the safety net assistance program and within the previous seven years with respect to medical assistance;

(iv) except as otherwise required by federal law, a person lawfully admitted for permanent residence who has worked for or can be credited with forty qualifying quarters as defined under title II of the federal Social Security Act, exclusive of any quarter after the thirty-first day of December, nineteen hundred ninety-six in which such person or such person's parent or spouse received any federal means tested assistance;

(v) any noncitizen lawfully residing in the state who is on active duty in the armed forces (other than active duty for training) or who (1) has received an honorable discharge (and not on account of noncitizen status) from the armed forces, or (2) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable (and not on account of noncitizen status) from the armed forces, or (3) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable (and not on account of noncitizen status) from the armed forces, or the spouse, unremarried surviving spouse or unmarried dependent child of any such noncitizen, if such noncitizen, spouse or dependent child is a qualified alien as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641), as amended;

(vi) a noncitizen granted status as a Cuban and Haitian entrant as defined in section 501(e) of the federal Refugee Education Act of 1980 within the previous five years with respect to benefits under the temporary assistance to needy families block grant program, and safety net assistance and within the previous seven years with respect to medical assistance; and

(vii) a noncitizen admitted to the United States as an Amerasian immigrant as described in section 402(a)(2)(A) of the federal personal responsibility and work opportunity reconciliation act of 1996 within the previous five years with respect to benefits under the temporary assistance to needy families block grant program, and safety net assistance and within the previous seven years with respect to medical assistance.

(b) The following persons, not described in paragraph (a) of this

subdivision, shall, if otherwise eligible, be eligible for family assistance, medical assistance, and safety net assistance:

(i) a noncitizen who is a qualified alien as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641), as amended, who entered the United States before the twenty-second day of August, nineteen hundred ninety-six and continuously resided in the United States until attaining qualified status; and

(ii) a qualified alien who entered the United States five years or more earlier with a status within the meaning of the term "qualified alien" as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641), as amended, if such entry occurred on or after the twenty-second day of August, nineteen hundred ninety-six.

(c) The following persons, not described in paragraph (a) or (b) of this subdivision, shall, if otherwise eligible, be eligible for safety net assistance and medical assistance, except that medical assistance shall be limited to care and services (not including care and services related to an organ transplant procedure) necessary for the treatment of an emergency medical condition as that term is defined in section 1903 of the federal social security act unless and until federal financial participation is available for the costs of providing medical assistance provided, however, that any such person who, on the fourth day of August, nineteen hundred ninety-seven was residing in a residential health care facility licensed by the department of health or in a residential facility licensed, operated or funded by the office of mental health or the office for people with developmental disabilities, and was in receipt of a medical assistance authorization based on a finding that he or she was a person permanently residing in the United States under color of law shall, if otherwise eligible, be eligible for medical assistance and provided, further, that any such person who, on the fourth day of August, nineteen hundred ninety-seven, was diagnosed as having AIDS, as defined in subdivision one of section two thousand seven hundred eighty of the public health law, and was in receipt of medical assistance authorization pursuant to title eleven of article five of this chapter based on a finding that he or she was a person permanently residing in the United States under color of law shall, if

otherwise eligible, be eligible for medical assistance:

(i) a qualified alien who entered the United States less than five years earlier or for less than five years has had a status within the meaning of the term "qualified alien" as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641), as amended, if such entry occurred on or after the twenty-second day of August, nineteen hundred ninety-six; and

(ii) a noncitizen whose status is not within the meaning of the term "qualified alien" as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641), as amended, but who is otherwise permanently residing in the United States under color of law.

(d) A person paroled into the United States for a period of less than one year shall, if otherwise eligible, be eligible to receive any state or local non-federal assistance provided under this chapter on the same terms as such programs are available to persons who are qualified aliens as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641), as amended.

(e) Nothing herein shall preclude the receipt by any noncitizen of community based non-cash assistance in accordance with the directions of the United States attorney general or the receipt of medical assistance for care and services (not including care and services related to an organ transplant procedure) necessary to treat an emergency medical condition as that term is defined in section 1903 of the federal social security act.

(f) A noncitizen who is not ineligible for federal supplemental security income benefits by reason of noncitizen status shall, if otherwise eligible, be eligible to receive additional state payments for aged, blind or disabled persons under section two hundred nine of this chapter.

(g) Noncitizens receiving supplemental security income benefits or additional state payments for aged, blind and disabled persons under section two hundred nine of this chapter shall be eligible for medical assistance if otherwise eligible.

(h) Qualified aliens as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S.

Code 1641), as amended, if otherwise eligible and except as otherwise provided by federal law, shall be eligible for services pursuant to title XX of the federal social security act.

2. Any noncitizen, including a noncitizen who is not a qualified alien as defined in section 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641), as amended, is eligible for adult protective services and services and assistance relating to child protection to the extent that such person is otherwise eligible pursuant to this chapter and the regulations of the department.

3. Each social services district shall report to the department, in accordance with regulations of the department, the name and address and other identifying information known to it with respect to any noncitizen known to be unlawfully in the United States.

4. To the extent permitted by federal law and regulation, the income and resources of a sponsor of a noncitizen, who has signed an affidavit of support pursuant to section 213A of the immigration and naturalization act, and the income and resources of such sponsor's spouse, shall be deemed available to such noncitizen for purposes of determining the eligibility of such noncitizen for assistance funded under the temporary for assistance funded under the temporary assistance to needy families block grant and medical assistance.

5. If and to the extent that the family assistance, safety net assistance, state additional payments in the supplemental security income program, emergency assistance to aged, blind or disabled adults or medical assistance is paid to or on behalf of a noncitizen for whom an affidavit of support pursuant to section 213A of the immigration and naturalization act has been signed, the social services district shall request reimbursement by the sponsor in the amount of such assistance, and, if the sponsor does not within forty-five days of such request indicate a willingness to commence payments, such social services district may commence an action against the sponsor pursuant to the affidavit. Remedies available to enforce an affidavit of support include

all of the remedies described in sections 3201, 3202, 3204 and 3205 of title 28 of the United States Code, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under state law; provided, however, that no action shall be brought more than ten years after assistance was last given.

6. Nothing in this section shall be interpreted as affecting the eligibility for pre-natal care benefits for persons otherwise eligible for such benefits.

ARTICLE 5

ASSISTANCE AND CARE

- Title 1. General provisions (§§ 131--152-d).
2. State reimbursement for public assistance and care (§§ 153--153-k).
3. Home relief (§§ 157-165).
4. Veteran assistance (§§ 168-178).
5. Public institutional care for adults (§§ 193-202).
6. Additional state payments for eligible aged, blind and disabled persons (§§ 207-212).
7. Services for the aged, blind or disabled (§§ 250-259).
8. Emergency assistance for aged, blind and disabled persons (§§ 300-309).
- 9-A. Equipment loan fund for the disabled (§§326-a--326-b).
- 9-B. Public assistance employment programs (§§ 330-342-a).
10. Aid to dependent children (§§ 343-360).
11. Medical assistance for needy persons (§§ 363-369).
- 11-B. Health insurance continuation program for persons with AIDS. (§§ 369-k--369-n).
- 11-C. Medicaid drug utilization review (§§ 369-aa--369-dd).
- 11-D. Family health plus program (§ 369-gg-369-hh).
12. Community centers and services for senior citizens (§§ 370--370-b).
- 12-A. Supports and services for youth suffering from adverse childhood experiences (§ 370-c).

13. State heating fuel crisis assistance (§ 370-aa).

TITLE 1

GENERAL PROVISIONS

- Section 131. Assistance, care and services to be given.
- 131-a. Monthly grants and allowances of public assistance.
 - 131-aa. Monthly statistical reports.
 - 131-aaa. Availability of adverse childhood experiences services.
 - 131-b. Fees for services.
 - 131-bb. Family homelessness and eviction prevention supplement program.
 - 131-c. Inclusion of parents and siblings of a minor in the public assistance household.
 - 131-d. Substance abuse rehabilitative and preventive services.
 - 131-e. Family planning services.
 - 131-f. Retroactive social security benefit increases.
 - 131-g. Authority to accept public and private gifts.
 - 131-h. Authority to operate family homes for adults.
 - 131-i. Social services districts; agreements.
 - 131-i*2. Family loan program.
 - 131-j. Certain utility deposits.
 - 131-k. Undocumented noncitizens.
 - 131-l. Exclusion of agent orange benefits.
 - 131-m. Information on resource referral services.
 - 131-n. Exemption of income and resources.
 - 131-o. Personal allowances accounts.
 - 131-p. Group health insurance benefits; condition of eligibility.
 - 131-q. Electronic payment file transfer system pilot project.
 - 131-r. Liability for reimbursement of public assistance benefits.
 - 131-s. Payments made for utility service for recipients of public assistance benefits, supplemental security income benefits or additional state payments.
 - 131-ss. Automated identification of OTDA assistance program participants.

- 131-t. Periodic reporting.
- 131-u. Domestic violence services.
- 131-v. Temporary emergency shelter.
- 131-w. Limitations in the payment of rent arrears.
- 131-x. Reverse mortgage loans.
- 131-z. Child assistance program.
- 131-zz. Child poverty reduction.
- 132. Investigation of applications.
- 132-a. Children born out of wedlock; special provisions.
- 133. Temporary preinvestigation emergency needs assistance or care.
- 133-a. Contracts for distribution of public assistance grants.
- 134. Supervision.
- 134-a. Conduct of investigation.
- 134-b. Front end detection system.
- 134-c. Requirement to publicly post information.
- 135. Cooperation of public welfare officials.
- 136. Protection of public welfare records.
- 136-a. Information from state tax commission and the comptroller.
- 137. Exemption from levy and execution.
- 137-a. Exemption of earnings of recipients from assignment, income execution and installment payment order.
- 138-a. Responsibility of the department for recipients in family care.
- 139-a. Special provisions to avoid abuse of assistance and care.
- 141. Burial of the dead.
- 142. Exclusiveness of eligibility requirements.
- 142-a. Federal economic opportunity act grants or payments; effect on eligibility for certain public assistance or care.
- 142-b. Federal manpower development training act and elementary and secondary education act grants or payments; effect on eligibility for certain public assistance or care.
- 143. Information to be given by employers of labor to social

- services officials, the department, family court and the state department of mental hygiene.
- 143-a. Information to be given to public welfare officials by retail instalment sellers, small loan companies and sales finance companies.
- 143-b. Avoidance of abuses in connection with rent checks.
- 143-c. Avoidance of abuses in connection with rent security deposits.
- 144. Power of public welfare officials and service officers to administer oaths; power of public welfare officials to subpoena persons liable for support and compel production of records.
- 144-a. Information to be given to officials of the department and of social services districts.
- 145. Penalties.
- 145-a. Judgment liens.
- 145-b. False statements; actions for treble damages.
- 145-c. Sanctions.
- 146. Penalty for the sale or exchange of assistance supplies.
- 147. Misuse of food stamps, food stamp program coupons, authorization cards and electronic access devices.
- 148. Penalty for unlawfully bringing a needy person into a public welfare district.
- 149. Penalty for bringing a needy person into the state.
- 150. Penalty for neglect to report or for making false report.
- 151. Penalties for cashing public assistance checks or accepting electronic benefit transfers from public assistance recipients.
- 152. Payments to the New York public welfare association; attendance at conventions of public welfare officials.
- 152-a. Burial reserves for certain recipients of public assistance or care from assigned assets.
- 152-b. Surplus after recovery of cost of public assistance and care; unclaimed funds.

152-c. Menstrual products.

152-d. Replacement of stolen public assistance.

§ 131. Assistance, care and services to be given. 1. It shall be the duty of social services officials, insofar as funds are available for that purpose, to provide adequately for those unable to maintain themselves, in accordance with the requirements of this article and other provisions of this chapter. They shall, whenever possible, administer such care, treatment and service as may restore such persons to a condition of self-support or self-care, and shall further give such service to those liable to become destitute as may prevent the necessity of their becoming public charges.

2. It shall be the duty of social services officials, insofar as funds are available for that purpose, to cooperate with the directors of state department of mental hygiene facilities in order to assist patients discharged or about to be discharged from mental hygiene institutions in their transition to a condition of self-support and self-care in the community.

3. As far as possible families shall be kept together, they shall not be separated for reasons of poverty alone, and they shall be provided services to maintain and strengthen family life. In providing such services, the public welfare official may utilize appropriate community resources, including non-profit private agencies. Whenever practicable, assistance and service shall be given a needy person in his own home. The commissioner of public welfare may, however, in his discretion, provide assistance and care in a boarding home, a home of a relative, a public or private home or institution, or in a hospital.

4. For needy persons who are members of a family household, the standard of need for determining their eligibility for public assistance shall be as prescribed by section one hundred thirty-one-a of this chapter and applicable federal requirements. For needy persons who are not members of a family household, the department shall continue to determine the standard of need for determining their eligibility for

public assistance pursuant to the provisions of this chapter and applicable federal requirements.

5. No public assistance shall be given to an applicant for or recipient of public assistance who has failed to comply with the requirements of this chapter, or has refused to accept employment in which he or she is able to engage.

5-a. The state commissioner of labor, in cooperation with the commissioner and with individual local social services officials, is hereby authorized to locate jobs services personnel wherever appropriate, in order to achieve the employment objectives of this chapter. Local social services officials, in cooperation with the commissioner and the commissioner of labor, are authorized to locate social services personnel wherever appropriate, in order to achieve the employment objectives of this chapter.

6. No individual who is under the age of eighteen and is not married, who resides with and provides care for his or her dependent child or is pregnant and otherwise entitled to family assistance shall receive family assistance for himself or herself unless the individual, individual and child or pregnant woman resides in a place of residence maintained as a home by the individual's parent, legal guardian or other adult relative or in an adult-supervised supportive living arrangement. Where possible, any such benefits to be paid on behalf of such individual, individual and child or pregnant woman shall be provided by the social services district to the parent, legal guardian or other adult relative with whom such individual, individual and child or pregnant woman resides. The requirement to reside with a parent, guardian or adult relative shall not apply if (a) the individual has no living parent, legal guardian or other appropriate adult relative who is living or whose whereabouts are known or (b) no living parent or legal guardian of such individual allows the individual to live in his or her home or (c) the individual or minor child is being or has been subjected to serious physical or emotional harm, sexual abuse or exploitation in the residence of the parent or guardian or (d) substantial evidence exists of imminent or serious harm if such individual or dependent child

were to live in the same residence with the individual's parent or legal guardian or (e) it is in the minor child's best interests to waive such requirement with respect to the individual or minor child, as determined in accordance with department regulations, consistent with federal law and regulations. Unless the individual's current living arrangement is appropriate, an individual and his or her minor child who are not required hereunder to reside with a parent, guardian or adult relative shall be required as a condition of assistance to reside in an adult supervised supportive living arrangement approved by the district in accordance with standards set by the department and taking into account the needs and concerns of the individual, including but not limited to a second chance home or maternity home. A "second chance home" is a facility which provides teen parents with a supportive and supervised living arrangement in which they are required to learn parenting skills, including child development, family budgeting, health and nutrition and other skills to promote long-term economic independence and the well-being of their children. Social services districts shall provide adult supervised supportive living arrangements or assist individuals in locating them. If a child subject to the requirements of this subdivision alleges facts which, if true, would render the requirement to live with a parent, guardian or other adult relative inapplicable by reason of paragraph (c) or (d) of this subdivision, a social services district shall take no action to deny assistance under the authority of this subdivision unless it has duly investigated in accordance with section four hundred twenty-four of this chapter and made a contrary finding. If a social services district denies assistance after a child alleges facts which, if true, would render this subdivision inapplicable by reason of paragraph (c) or (d) of this subdivision, the applicant shall be entitled to a fair hearing pursuant to section twenty-two of this chapter held within thirty days of the request, if the request is timely made.

7. a. Care, treatment and service as provided in subdivision one of this section may include, in accordance with applicable federal and state requirements, if any, medical care, instruction and work training to restore health, aptitudes and capabilities or develop new aptitudes and skills for the purpose of preparing individuals for gainful

employment.

b. A public welfare official responsible for the assistance and care of a person who, in the judgment of such official, is employable or potentially employable, may require such person to receive suitable medical care and/or undergo suitable instruction and/or work training. Any such person who wilfully refuses to accept such medical care, refuses or fails to report for or cooperate in a program of instruction and/or work training as required by the public welfare official, shall be ineligible to receive public assistance and care. However, the requirements of this provision relating to instruction and work training shall not apply in the case of a person who is not available for employment by reason of age, health or other disability.

c. The provisions of this section shall not confer authority on a social services official to provide instruction which is available through the public school system, but regulations of the department may make provision for such authority when special need therefor is demonstrated.

8. This section shall be construed to require the employment of such employees as may be necessary and qualified to perform or provide the specialized services indicated by federal or state requirements.

9. Upon determining that a person is eligible for any form or category of public assistance, the social services official shall issue to any such person to whom payment is to be made, an appropriate payment access card, in a form approved by the office of temporary and disability assistance, which shall be used as the office of temporary and disability assistance, by regulation, may prescribe for improved administration.

10. Any applicant who voluntarily terminated his or her employment or voluntarily reduced his or her earning capacity for the purpose of qualifying for public assistance or a larger amount thereof shall be disqualified from receiving such assistance for ninety days from such termination or reduction, unless otherwise required by federal law or

regulation. Any applicant who applies for public assistance within ninety days after voluntarily terminating his or her employment or reducing his or her earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his or her employment or reduced his or her earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person.

11. Social services officials are hereby authorized to furnish assistance which duplicates assistance already granted, but, unless otherwise specifically required by the provisions of title eight of article five of this chapter, (i) in no event shall such officials be required to furnish such assistance and (ii) in no event shall state reimbursement be available for such expenditures, provided, however, that any payment required by a court of competent jurisdiction shall be subject to state reimbursement.

12. Notwithstanding any provision of this chapter or other law to the contrary, no public assistance or food stamps shall be given to any individual during the ten-year period that begins on the date the individual is convicted in federal or state court of having made a fraudulent statement or representation with respect to his or her place of residence in order to receive public assistance, medical assistance or food stamps simultaneously from two or more states or supplemental security income in two or more states. The preceding sentence shall not apply with respect to a conviction of an individual in any month beginning after the president of the United States grants a pardon with respect to the conduct which was the subject of the conviction.

13. Social services districts shall provide all applicants and recipients of public assistance with children five years of age or less with information and a schedule regarding age-appropriate immunizations for children in accordance with the recommendations of the department of health. The telephone number of the local county health department shall be included on the immunization schedule.

14. (a) Notwithstanding any provision of this chapter or other law to

the contrary, no public assistance shall be given to any individual who is (i) fleeing to avoid prosecution or custody or conviction under the laws of the place from which the individual flees for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of such state or (ii) violating a condition of probation or parole imposed under federal or state law.

(b) For purposes of this section, if and to the extent permitted by federal law, a person shall be considered to be violating a condition of probation or parole only if:

(i) he or she is currently an absconder from probation or parole supervision and a warrant alleging such a violation is outstanding; or

(ii) he or she has been found by judicial determination to have violated probation or by administrative adjudication by the department of corrections and community supervision to have violated parole.

Such person shall be considered to be violating a condition of probation or parole only until he or she is restored to probation or parole supervision or released from custody, or until the expiration of the person's maximum period of imprisonment or supervision, whichever occurs first.

(c) A person considered to be violating a condition of probation or parole under this section shall include a person who is violating a condition of probation or parole imposed under federal law.

(d) For purposes of this section, probation or parole shall include conditional release, wherever applicable.

15. Notwithstanding any provision of this chapter or other law to the contrary, no public assistance shall be given to or for any minor child who has been or is expected to be absent from the home of his or her parent or other caretaker relative for a consecutive period of forty-five days or more without good cause as set forth in regulations of the department, nor shall any assistance be given to any parent or other caretaker relative who fails to notify the social services district of the absence of the minor child within five days after it becomes clear to the parent (or relative) that the child will be absent

for a consecutive period of forty-five days or more. Good cause shall include absence for placement in foster care if the goal set forth in the child service plan under section four hundred nine-e of this chapter is the return of the child to a member of the household, or attendance at school or hospitalization, if it is in the best interests of the child to return home and return is expected within a reasonable time.

16. If, in accordance with section one hundred fifty-eight, three hundred forty-nine-b or other provisions of this chapter, the social services official determines that an individual is not cooperating in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not have good cause for such failure or is not otherwise excepted from so cooperating in accordance with regulations of the department, the assistance given to the household shall be reduced by twenty-five percent.

18. Notwithstanding any provision of this chapter or other law to the contrary, no public assistance shall be given to any parent under the age of eighteen, who is not married and has a minor child twelve weeks of age or more in his or her care and who has not successfully completed a high school education or its equivalent if such individual does not participate in educational activities directed toward the attainment of a high school diploma or its equivalent or an alternative educational or training program directly related to employment and approved by the social services district. No person shall be denied assistance under this subdivision during any period of time in which enrollment in required educational activities is not available. Nothing herein shall prohibit a social services district from requiring any person to work toward attaining a secondary school diploma or its equivalent unless such person has been determined by a medical, psychiatric or other appropriate professional to lack the requisite capacity to complete successfully such a course of study.

19. When a recipient claims that his or her system access device has been lost, stolen, or destroyed, or that the security features of the card have been compromised, the local social services district, subject

to reasonable terms and conditions set forth in department regulations and policies, shall provide the recipient with a replacement card within forty-eight hours exclusive of weekends and holidays.

20. In accordance with the provisions of this subdivision and the regulations of the office of temporary and disability assistance, social services districts shall make all applicants for and recipients of public assistance aware of their option to receive an information packet appropriate for victims of sexual assault. Such information packet shall be made available to all individuals who demonstrate a need for or who are interested in receiving services appropriate for victims of sexual assault, and shall include referral and contact information for all local programs that provide services to victims of sexual assault including, but not limited to:

- (a) sexual assault examiner programs, including a list of any local hospitals offering sexual assault forensic examiner services certified by the department of health;

- (b) rape crisis centers; and

- (c) other advocacy, counseling, and hotline services appropriate for victims of sexual assault.

§ 131-a. Monthly grants and allowances of public assistance. 1. Any inconsistent provision of this chapter or other law notwithstanding, social services officials shall, in accordance with the provisions of this section and regulations of the department, provide public assistance to needy persons who constitute or are members of a family household, who are determined to be eligible in accordance with standards of need established in subdivision two. Provision for such persons, for all items of need, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall be made in accordance with this section. Such provision shall be made in monthly or semi-monthly allowances and grants within the limits of the schedules included in subdivision three of this section except for additional amounts which shall be included therein for shelter, fuel for heating, additional cost of meals for persons who are unable to prepare meals at home and for other items for which

specific provision is otherwise made in article five. As used in this section the term "shelter" may include a grant not to exceed two thousand five hundred dollars toward the purchase of an interest in a cooperative. A social services official shall require assignment of recipient's equity in such cooperative housing in accordance with the rules of the board and regulations of the department.

2. (a) Through June thirtieth, two thousand nine, the following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$112	\$179	\$238	\$307	\$379	\$438

For each additional person in the household there shall be added an additional amount of sixty dollars monthly.

(a-1) For the period beginning July first, two thousand nine and ending June thirtieth, two thousand ten, the following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$126	\$201	\$268	\$345	\$426	\$492

For each additional person in the household there shall be added an additional amount of sixty-seven dollars monthly.

(a-2) For the period beginning July first, two thousand ten and ending June thirtieth, two thousand twelve, the following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$141	\$225	\$300	\$386	\$477	\$551

For each additional person in the household there shall be added an additional amount of seventy-five dollars monthly.

(a-3) For the period beginning July first, two thousand twelve and ending September thirtieth, two thousand twelve, the following schedule shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$150	\$239	\$317	\$409	\$505	\$583

For each additional person in the household there shall be added an additional amount of eighty dollars monthly.

(a-4) For the period beginning October first, two thousand twelve and thereafter, the following shall be the standard of monthly need for determining eligibility for all categories of assistance in and by all social services districts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$158	\$252	\$336	\$433	\$534	\$617

For each additional person in the household there shall be added an additional amount of eighty-five dollars monthly.

(b) In addition to the above, the standard of need shall include amounts for shelter and fuel for heating, amounts for home energy payments (including amounts for supplemental home energy grants), amounts for additional cost of meals for persons who are unable to prepare meals at home and amounts for other items when required by individual case circumstances for which specific provision is otherwise made in article five of this chapter. For purposes of determining the amount to be included in the standard of need for shelter and fuel for heating, to the extent that federal reimbursement is available therefor, social services officials shall include in the household any child who has entered foster care pursuant to section three hundred eighty-four-a of this chapter who was eligible for and in receipt of assistance and care as a member of the household in and for the month of entry into foster care and for whom the family service plan, as defined in section four hundred nine-e of this chapter, includes a goal of discharge to a member of the household.

(c) Notwithstanding the provisions of this chapter or of any other law

or regulation to the contrary, on and after the effective date of this paragraph, the amount to be included in the standard of need for shelter for an eligible tenant residing in city, state or federal public housing shall be the greater of (i) the shelter allowance for public housing prescribed by regulations of the department, (ii) the amount payable pursuant to a modified shelter allowance schedule prescribed by regulations of the department for the particular housing authority, or (iii) an amount equal to fifty percent of the maximum shelter allowance prescribed by regulations of the department for non-public housing located in the social services district in which the public housing is located. Commencing one year after such effective date, such shelter allowance shall be the greater of (i) the shelter allowance for public housing prescribed by regulations of the department, (ii) the amount payable pursuant to a modified shelter allowance schedule prescribed by regulations of the department for the particular housing authority, or (iii) an amount equal to seventy-five percent of the maximum shelter allowance prescribed by regulations of the department for non-public housing located in the social services district in which the public housing is located. Commencing two years after such effective date, the amount to be included in the standard of need for shelter for an eligible tenant residing in city, state or federal public housing shall be the maximum shelter allowance prescribed by regulations of the department for non-public housing located in the social services district in which the public housing is located.

(d) If by the application of the standard of need as provided for in this subdivision the monthly need of an individual or household is less than ten dollars, such individual or household shall not be considered in need of cash assistance but shall be deemed to be a recipient of assistance for all other purposes including determining eligibility for medical assistance and social rehabilitative services.

(e) The standard of monthly need, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount.

3. (a) Through June thirtieth, two thousand nine, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be

disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$112	\$179	\$238	\$307	\$379	\$438

For each additional eligible needy person in the household there shall be an additional allowance of sixty dollars monthly.

(a-1) For the period beginning July first, two thousand nine and ending June thirtieth, two thousand ten, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$126	\$201	\$268	\$345	\$426	\$492

For each additional person in the household there shall be added an additional amount of sixty-seven dollars monthly.

(a-2) For the period beginning July first, two thousand ten and ending June thirtieth, two thousand twelve, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$141	\$225	\$300	\$386	\$477	\$551

For each additional person in the household there shall be added an additional amount of seventy-five dollars monthly.

(a-3) For the period beginning July first, two thousand twelve and ending September thirtieth, two thousand twelve, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$150	\$239	\$317	\$409	\$505	\$583

For each additional person in the household there shall be added an additional amount of eighty dollars monthly.

(a-4) For the period beginning October first, two thousand twelve and thereafter, persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, less any available income or resources which are not required to be disregarded by other provisions of this chapter, shall receive maximum monthly grants and allowances in all social services districts, in accordance with the following schedule, for public assistance:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$158	\$252	\$336	\$433	\$534	\$617

For each additional person in the household there shall be added an additional amount of eighty-five dollars monthly.

(b) Notwithstanding the provisions of this section or any other law to the contrary, no payment of public assistance shall be made for any month if the amount of such payment would be less than ten dollars per month.

(c) The amount of the monthly grant and allowance, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount.

3-c. Commencing July first, nineteen hundred eighty-one, persons and families determined to be eligible by the application of the standard of

need prescribed by the provision of subdivision two of this section, shall receive a home energy grant equal to the following monthly amounts:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$14.10	\$22.50	\$30.00	\$38.70	\$47.70	\$55.20

For each additional needy person in the household, there shall be added an additional amount of seven dollars and fifty cents.

3-d. Commencing January first, nineteen hundred eighty-six, for persons and families determined to be eligible by the application of the standard of need prescribed by the provisions of subdivision two of this section, the amounts set forth in paragraph (a) of subdivision three of this section, after application of subdivision three-c of this section, shall be increased by the following amounts as a monthly supplemental home energy grant:

Number of Persons in Household					
One	Two	Three	Four	Five	Six
\$11	\$17	\$23	\$30	\$37	\$42

For each additional needy person in the household, there shall be added an additional amount of five dollars monthly.

4. If federal requirements make it necessary to adjust any schedule of grants and allowances, or part thereof, the department shall make such adjustments but the adjusted schedule of grants and allowances shall not exceed the schedule of monthly amounts in subdivision two above.

5. Notwithstanding any other provisions of this chapter or other law, a social services official may make provisions for the following items and services: (a) replacement of necessary furniture and clothing for persons in need of public assistance who have suffered the loss of such items as the result of fire, flood or other like catastrophe, provided provisions therefor cannot otherwise be made;

(b) purchase of necessary and essential furniture required for the establishment of a home for persons in need of public assistance, provided provision therefor cannot otherwise be made;

(c) essential repair of heating equipment, cooking stoves, and

refrigerators used by persons in need of public assistance in their homes, provided provision therefor cannot otherwise be made except that replacement may be authorized when less expensive than repair;

(d) camp fees for a camp operated by a not-for-profit organization, corporation or agency, which has been issued an operating certificate by the appropriate health official in whose jurisdiction such camp is located, when in the judgment of the social services official it is advisable for the welfare of a child receiving family assistance or safety net assistance to attend such camp, provided, however, that funds cannot be obtained from other sources and such assistance is not in excess of maximum fees as established by regulations of the office of temporary and disability assistance; life insurance premiums provided the policy is assigned to the office of temporary and disability assistance, or in cases where the recipient is aged, his or her life expectancy is short, or he or she is deemed uninsurable;

(e) Provision of allowances as prescribed by regulations of the department to meet the needs of a pregnant woman, beginning with the fourth month of pregnancy which has been medically verified.

(f-1) a one-time benefit to public assistance recipients upon the birth of a new child, as prescribed by regulations of the department.

7. Whenever a social services official finds that a recipient of public assistance has failed to fully apply the amount allowed in his grant for shelter to the payment of rent for his housing accommodations, unless rent is being withheld pursuant to law or court order, the social services official shall furnish such recipient's shelter allowance in the form of direct payments to the owner of such housing accommodations or his or her designated agent.

8. (a) In determining the need for aid provided pursuant to the public assistance programs, the following income earned during a month by applicants for or recipients of such aid shall be exempt and disregarded:

(i) all of the earned income of a dependent child receiving such aid or for whom an application for such aid has been made, who is a full-time student or part-time student attending a school, college, or university, or a course of vocational or technical training designed to

fit him for gainful employment;

(ii) fifty percent of the earned income for such month of any recipient; provided, however, that such percentage amount shall be adjusted in June of each year to reflect changes in the most recently issued poverty guidelines of the United States Bureau of the Census, such that a household of three without special needs, living in a heated apartment in New York city and without unearned income would become ineligible for assistance with gross earnings equal to the poverty level in such guidelines;

(iii) from the earned income of any child, applicant, recipient, or relative applying for or receiving aid pursuant to such program, or of any other individual living in the same household as such relative and child whose needs are taken into account in making such determination, one hundred fifty dollars of the earned income for such month that remains after application of subparagraph (ii) of this paragraph;

(v) the first one hundred dollars received in such month which represent support payments timely paid in and for such month for one child, and the first two hundred dollars received in such month which represent support payments timely paid in and for such month for two or more children, and the first one hundred dollars received in such month which represent support payments timely paid in and for each of any prior months for one child, and the first two hundred dollars received in such month which represent support payments timely paid in and for each of any prior months for two or more children, in any household applying for or receiving public assistance, including support payments collected and paid to the public assistance household by the social services district;

(vi) in any calendar year, all of the earned income of a dependent child receiving such aid who is a full-time student;

(vii) all of the income of a dependent child living with a parent or other caretaker relative, who is receiving such aid or for whom an application for such aid has been made, which is derived from participation in a program carried out under the federal job training partnership act (P.L. 97-300) or any successor act, provided, however, that in the case of earned income such disregard must be applied for at least, but no longer than, six months per calendar year for each such child.

(viii) any federal income taxes refunded by reason of section thirty-two of the Internal Revenue Code of nineteen hundred eighty-six relating to the earned income tax credit or any payment by an employer under section three thousand five hundred seven of such code relating to advance payment of the earned income tax credit.

(ix) all of the income derived from participation in the summer youth employment program, provided however, that such income shall be exempt only for an individual who is not older than age twenty-four at the time of enrollment in the summer youth employment program and such disregard must be applied for the length of the individual's participation in such program.

(x) all of the income of a head of household or any person in the household, who is receiving such aid or for whom an application for such aid has been made, which is derived from the health care and mental hygiene worker bonuses under section three hundred sixty-seven-w of this article or under the chapter of the laws of two thousand twenty-two which added this subparagraph.

* (xi) Any financial assistance received by individuals as part of their participation in a pilot program that has developed a plan to study and evaluate the impact and potential benefits of direct cash transfers. Such exemption and disregard shall be applicable for the length of time the individual participates in the program, but not longer than sixty months.

* NB Repealed March 23, 2029

(xii) all of the earned income of a recipient of public assistance that is derived from participation in a qualified work activity or training program as determined by the office of temporary and disability assistance, to the extent that such earned income has not already been disregarded pursuant to subparagraph (vii) of this paragraph, provided that the recipient's total income shall not be more than two hundred percent of the federal poverty level.

(xiii) once during the lifetime of a recipient of public assistance, all of the earned income of such recipient will be disregarded following job entry, provided that such exemption of income for purposes of public assistance eligibility shall be for no more than six consecutive months from the initial date of obtaining such employment and that the recipient's total income shall not be more than two hundred percent of

the federal poverty level. In the event a recipient moves from one to another social services district, this disregard shall follow the recipient.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, there shall not be disregarded under subparagraphs (ii) and (iii) of such paragraph any earned income of any of the persons to which subparagraph (ii) of such paragraph applies if such person:

(i) terminated his employment or reduced his earned income without good cause, within a period of not less than seventy-five days, or such other period of time as required by federal law or regulation, prior to a determination of need for public assistance;

(ii) refused without good cause, within such seventy-five day period, to accept employment in which he is able to engage, which is offered through the public employment office of the New York state department of labor or refused to accept employment otherwise offered by an employer if the offer of such employer is determined by an appropriate social services official to be a bona fide offer of employment; or

(iii) failed without good cause to make a timely report to the appropriate social services district of earned income received in the month a determination of need is made.

(c) There shall not be disregarded under subparagraph (iii) of paragraph (a) of this subdivision any earned income of any of the persons specified in subparagraph (ii) of such paragraph, if the income of such person was in excess of his or her need, unless such person received public assistance in one or more of the four months preceding the month of need determination.

9. In determining the eligibility of a child for public assistance and the amount of such assistance for any month there shall be taken into consideration so much of the income of such dependent child's stepparent living in the same household as such child as exceeds the sum of:

(a) the first seventy-five dollars of the total of the stepparent's earned income for such month, or such lesser amount as the department may prescribe in the case of a stepparent not engaged in full-time employment or not employed throughout such month consistent with federal law and regulations;

(b) the standard of need as contained in this section for a family of

the same composition as the stepparent and those other individuals living in the same household as the child who are not applying for or receiving benefits and are claimed by such stepparent as dependents for purposes of determining such stepparent's federal income tax liability;

(c) amounts paid by the stepparent to individuals not living in such household and claimed by such stepparent as dependents for purposes of determining such stepparent's federal personal income tax liability; and

(d) payments of alimony or child support made by such stepparent with respect to individuals not living in such household.

12. (a) No public assistance household having income which, after application of applicable disregards, exceeds the household standard of need, because of the receipt in any month of a nonrecurring lump sum of earned or unearned income, shall be eligible for public assistance for a period equal to the full number of months derived by dividing (i) the sum of the lump sum income and all other income received in such month which is not excluded under subdivision eight of this section; by (ii) the standard of need for a family size which consists of the public assistance household plus any other individuals whose lump sum income is considered available to such household. Any income remaining from this calculation is income in the first month following such period of ineligibility.

(b) At any time after determining the period of ineligibility as required in paragraph (a) of this subdivision, the social services official shall recalculate the remaining period of ineligibility in such circumstances and under such conditions as the department shall prescribe by regulation, subject to paragraph (c) of this subdivision and consistent with federal law and regulations.

(c) The social services official shall exclude from any lump sum income any amounts which are exempt and disregarded as cash and liquid or nonliquid resources pursuant to section one hundred thirty-one-n of this title and shall recalculate the period of ineligibility caused by receipt of a nonrecurring lump sum of income subject to this subdivision to the extent that such income is applied to any or all of the following within ninety days of receipt: an automobile needed for the applicant or recipient to seek or retain employment or for travel to and from work activities as defined in section three hundred thirty-six of this

chapter, a bank account or accounts, or a burial plot or plots, or a funeral agreement or agreements, the values of which are exempt and disregarded as a resource pursuant to section one hundred thirty-one-n of this title.

13. Pursuant to regulations of the office of temporary and disability assistance, public assistance eligibility shall, to the extent permitted by federal law, not lapse solely by reason of the death of the adult relative caretaker of a minor child, until arrangements are completed for the addition of the child to another public assistance household, reclassification of the case, foster care or other appropriate financial support. For purposes of subdivision eight of section one hundred fifty-three of this article, safety net assistance given to such a child during the first forty-five days after application therefor shall be regarded as being given to meet emergency circumstances.

14. In determining the need for aid provided pursuant to public assistance programs, each person living with medically diagnosed HIV infection as defined by the AIDS institute of the department of health in social services districts with a population over five million who is receiving services through such district's administrative unit providing HIV/AIDS services, public assistance and earned and/or unearned income, shall not be required to pay more than thirty percent of his or her monthly earned and/or unearned income toward the cost of rent that such person has a direct obligation to pay; this provision shall not apply to room and board arrangements.

15. In determining the need for aid provided pursuant to public assistance programs, each public assistance recipient living with medically diagnosed HIV infection as defined by the AIDS institute of the department of health in social services districts with a population of five million or fewer, at local option and in accordance with a plan approved by the office of temporary and disability assistance, may not be required to pay more than thirty percent of his or her monthly earned and/or unearned income toward the cost of rent that such person has a direct obligation to pay; this provision shall not apply to room and board arrangements.

§ 131-aa. Monthly statistical reports. 1. Reporting requirements. The commissioner of the office of temporary and disability assistance shall issue, within sixty days of the end of each month, a monthly statistical report containing each of the tables in the March two thousand four Temporary and Disability assistance statistics report as provided on the office of temporary and disability assistance website. Such report shall also include aggregate total claims for both New York city and the rest of the state related to temporary and disability assistance not already included in the March 2004 Temporary and Disability Assistance Statistics report as provided on the office of temporary and disability assistance website. The commissioner may also include similar tables containing statistical information including, but not limited to, temporary and disability assistance claims on emergency child care, family shelter, shelter for victims of domestic violence, eviction prevention including, but not limited to, security deposits and brokers fees, supplemental claims, cancellations or refunds, drug or alcohol treatment, and increased costs associated with cases for individuals with AIDS. The commissioner may also include any other statistical information related to temporary and disability assistance that he or she deems to be appropriate. The commissioner shall also, within sixty days of the completion of each quarter of the state fiscal year, issue an update of monthly temporary and disability assistance claims for each of the previous twenty-four months based on actual claims received by the end of such quarter; provided, however, the update following the third quarter of the state fiscal year shall be completed within thirty days. Such update shall include the total number of recipients, the monthly average payment, and total claims, received by the end of such quarter, for New York city, the rest of the state, and total state claims.

2. Additional reporting requirements. In addition to the information required to be included in the monthly statistical report pursuant to subdivision one of this section, the commissioner of the office of temporary and disability assistance shall include in such monthly statistical report detailed tables with comprehensive data for federally

participating family assistance and safety net cases, safety net non-maintenance of effort cases, and safety net maintenance of effort cases, for each county and New York city, according to the following categories:

(a) Work participation rates. A statistical table containing data related to federally required work participation rates including, but not limited to, the numerator applied to the required federal calculation for work participation and the denominator applied to the federal calculation for work participation; and any other information that the commissioner deems to be appropriate.

(b) Earned income. A statistical table containing data related to the aggregate amount of earned income reported by public assistance recipients including, but not limited to, aggregate earned income used in the calculation of public assistance benefits, both before and after the earnings disregard is applied to such benefits, the number of cases for which earned income is applied to the calculation of such benefits, both before and after the earnings disregard, and any other information that the commissioner deems to be appropriate.

(c) Sanctioned cases. A statistical table containing data related to the number of cases in sanction status and the reason for such sanction including, but not limited to, the number of sanctioned cases included in the federal work participation calculation, the number of sanctioned cases not included in the federal work participation calculation, and any other information that the commissioner deems to be appropriate.

(d) Home energy assistance program (HEAP). For each county and New York city, a statistical table containing data related to the allocation of federal and state monies for the HEAP program and the number and dollar amount of benefits provided including, but not limited to, the number, dollar amount and average dollar amount of regular autopay benefits, regular non-autopay benefits, emergency benefits, allocation for administrative costs, and any other information that the commissioner deems to be appropriate.

3. Upon issuance, the reports required by this section shall be posted on the office of temporary and disability assistance website, and shall also be submitted by the commissioner to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the

senate finance committee and the chair of the assembly ways and means committee.

§ 131-aaa. Availability of adverse childhood experiences services.

Each local social services district shall be required to make available to applicants and recipients of public assistance who are a parent, guardian, custodian or otherwise responsible for a child's care, educational materials developed pursuant to subdivision two of section three hundred seventy-c of this article to educate them about adverse childhood experiences, the importance of protective factors and the availability of services for children at risk for or suffering from adverse childhood experiences. The educational materials may be made available electronically and shall be offered at the time of application and recertification.

§ 131-b. Fees for services. If and only to the extent the imposition of a fee is required by federal law and regulation to insure continued full federal financial participation in the state's plan for services under applicable federal law and regulations, the department shall, by regulation, require a local social services district to impose a fee for any service made available by that district to an individual who is not a recipient of public assistance and care. This section shall not apply to fees for day care services as authorized by title five of article six of this chapter.

§ 131-bb. Family homelessness and eviction prevention supplement program. Notwithstanding any other provision of law to the contrary, for a local social services district with a population of five million or more, the commissioner shall designate such local social services district to make vouchers available to eligible families under the family homelessness and eviction prevention supplement ("FHEPS") program, and to administer the program in accordance with a plan approved pursuant to 18 N.Y.C.R.R. § 352.3(a)(3), provided however, that the maximum rent for such vouchers shall be set at the United States

department of housing and urban development's fair market rent level. The state shall reimburse the local social services district for payments made under the FHEPS program in a manner consistent with title two of this article.

§ 131-c. Inclusion of parents and siblings of a minor in the public assistance household. 1. For the purposes of determining eligibility for and the amount of assistance payable, the social services district shall, when a minor is named as an applicant for public assistance, require that his or her parents and minor brothers and sisters also apply for assistance and be included in the household for purposes of determining eligibility and grant amounts, if such individuals reside in the same dwelling unit as the minor applying for assistance. Any income of or available for such parents, brothers and sisters which is not disregarded under subdivision eight of section one hundred thirty-one-a of this article, shall be considered available to such household. The provisions of this subdivision shall not apply to individuals who are recipients of federal supplemental security income benefits or additional state payments pursuant to this chapter, or to individuals whose relationship to the minor is that of stepbrother or stepsister, or to any other individuals whose needs are excluded pursuant to department regulations consistent with federal law and regulations.

2. For the purposes of determining eligibility for and the amount of assistance payable, the social services district shall deem available to any minor whose parent or legal guardian is a minor, any income of the parent or legal guardian of such minor parent or legal guardian residing in the same dwelling unit, to the same extent that the income of a stepparent would be included pursuant to subdivision nine of section one hundred thirty-one-a of this article.

3. For the purposes of this section a minor is a child under the age of eighteen.

§ 131-d. Substance abuse rehabilitative and preventive services.

1. Any inconsistent provision of this chapter or other law notwithstanding, social services officials shall provide substance abuse services, to eligible needy substance abusers and persons who are substance dependent, under aid to dependent children, in accordance with regulations of the department, if and so long as federal aid is available therefor.

2. Each social services official shall provide such services either directly or by purchase from a public or private non-profit agency; provided, however, that such services are approved by the state division of substance abuse services and that any facility furnishing such services is supervised and approved by the state division of substance abuse services.

3. If and so long as federal funds are available therefor, the department shall be responsible for providing eligible services pursuant to this section, provided, however, such services shall be furnished through a cooperative agreement with the state division of substance abuse services. Provided, further that the scope of the responsibility of the department hereunder shall not extend beyond the authorization of such division to furnish such services either directly or through contract.

4. There shall be such cooperative agreements, between the department and the state division of substance abuse services and other appropriate state departments and agencies as shall be necessary to assure that there will be a maximum utilization of existing rehabilitative and preventive services and that the purposes and objectives of this section will be effectively accomplished.

5. Any inconsistent provision of law notwithstanding, expenditures made by a social services official under this section shall be deemed expenditures for and administration of public assistance and care, and shall be subject to reimbursement by the state in accordance with the provisions of section one hundred fifty-three of this chapter.

§ 131-e. Family planning services. Each social services commissioner shall require that appropriate members of his staff personally advise eligible needy persons periodically of the availability at public expense of family planning services for the prevention of pregnancy and inquire whether such persons desire to have such services furnished to them. In those cases where such services are desired, they shall be made available at public expense under appropriate provisions of this chapter. Nothing herein shall be construed, however, to require or permit coercion of such persons to request or receive family planning services.

§ 131-f. Retroactive social security benefit increases. Any inconsistent provisions of this title, other provisions of this chapter or of any other law notwithstanding, in determining the need for family assistance, a social services official shall disregard, in addition to any other amounts which are required or permitted to be disregarded in determining such need, any retroactive lump sum payment made to an individual under title II of the social security act (or under the railroad retirement act of nineteen hundred thirty-seven by reason of the first proviso in section three (e) thereof), as a result of an increase in monthly benefits under the old age, survivors, and disability insurance system.

§ 131-g. Authority to accept public and private gifts. The department or a social services district shall have the power to apply for, accept, receive and expend public and private gifts or grants of money, property or services for any purpose provided for by this chapter.

§ 131-h. Authority to operate family homes for adults. A social services official may be authorized to operate family homes for adults, in compliance with the regulations of the department, if such official applies for such authority and demonstrates the need therefor and that

suitable care is not otherwise available.

*** § 131-i. Social services districts; agreements.** Subject to the provisions of section one hundred nineteen-o of the general municipal law, social services districts may enter into agreements for the performance among themselves or of one for another of any of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service; provided, however, that no such agreement shall result in any relocation of offices which would unreasonably diminish access to necessary services or unreasonably increase unreimbursed travel for applicants for or recipients of public assistance or services.

* NB There are 2 § 131-i's.

*** § 131-i. Family loan program.** 1. From amounts appropriated for such purpose, the department of labor in consultation with the department is hereby authorized and directed to solicit proposals to establish programs to be known as family loan programs. Such programs shall provide small, no-interest loans to custodial parents with income below two hundred percent of the federal poverty level and who are working or enrolled in a post-secondary education program, to aid in covering the costs of unexpected expenses that could interfere with their ability to maintain employment or continue education. Loans awarded through a family loan program may be paid directly to a third party on behalf of a loan recipient and in either case shall not constitute income or resources for the purposes of public assistance and care so long as the funds are used for the intended purpose.

2. The commissioner of labor shall enter into written agreements with not-for-profit organizations or local government agencies to administer loan pools. Agreements shall be entered into with no more than four organizations and/or agencies, no more than one of which shall be located in the city of New York.

3. Program sites shall be approved based on the demonstrated ability

of the organization or governmental agency to secure funding from private and/or public sources sufficient to establish a loan pool to be maintained through repayment agreements entered into by eligible low-income families. Funds awarded by the department of labor to approved program sites shall be used for the express purposes of covering staffing and administration costs associated with administering the loan pool.

4. From amounts appropriated for such purpose, the department of labor in consultation with the office of temporary and disability assistance is hereby authorized and directed to solicit proposals to establish up to four new family loan programs. Such programs shall operate according to provisions set forth in subdivision one through three of this section; provided, however, that such programs may provide no- or low-interest loans, and further provided that applications submitted by a consortium of not-for-profit organizations or local government agencies shall be viewed as one program and may receive greater funding by the department of labor than an application submitted by a single organization or agency. Low-interest loans shall not exceed a rate greater than two-thirds of the prime rate. No not-for-profit organization or local government agency awarded funding from appropriations made in the nineteen hundred ninety-seven--nineteen hundred ninety-eight fiscal year shall be eligible for funds made available from appropriations made in the nineteen hundred ninety-nine--two thousand fiscal year.

* NB There are 2 § 131-i's

§ 131-j. Certain utility deposits. Any inconsistent provision of this chapter or other law notwithstanding, a public assistance recipient shall not be required by any corporation subject to the provisions of article four of the public service law to pay a security deposit as a condition of receiving any utility service provided by such utility company. This section shall apply to recipients of supplemental security income benefits or additional state payments, as defined in section three hundred of this chapter, and such persons shall be deemed public assistance recipients for the purposes of this section.

§ 131-k. Undocumented noncitizens. An otherwise eligible applicant or recipient who has been determined to be ineligible for aid to dependent children, home relief or medical assistance because such individual is a noncitizen unlawfully residing in the United States or because such individual failed to furnish evidence that such individual is lawfully residing in the United States shall be immediately referred to the United States immigration and naturalization service, or the nearest consulate of the country of the applicant or the recipient for such service or consulate to take appropriate action or furnish assistance.

§ 131-l. Exclusion of agent orange benefits. A social services official shall disregard as income and resources in any program of public assistance such sums as are required to be disregarded under section two hundred thirty-five-a of the military law with respect to exposure to agent orange or phenoxy herbicides.

§ 131-m. Information on resource referral services. 1. Each social services district shall furnish social services information and resource referral services, in accordance with the provisions of this section and the regulations of the department.

2. Such services shall be furnished without charge to any person who is in need of and requests such services, without regard to such person's eligibility for public assistance.

3. Each social services district shall designate staff having administrative responsibility for assuring the furnishing of information and referral regarding the following services and programs and for making appropriate inquiries related to the actual receipt of such services: financial assistance programs, health care and services, social services, employment services and other community services, including legal, education and consumer services.

*** § 131-n. Exemption of income and resources.** 1. The following resources shall be exempt and disregarded in calculating the amount of benefits of any household under any public assistance program: (a) cash and liquid or nonliquid resources up to two thousand five hundred dollars for applicants, three thousand seven hundred fifty dollars for applicants in households in which any member is sixty years of age or older or is disabled or ten thousand dollars for recipients, (b) an amount up to four thousand six hundred fifty dollars in a separate bank account established by an individual while currently in receipt of assistance for the sole purpose of enabling the individual to purchase a first or replacement vehicle for the recipient to seek, obtain or maintain employment, so long as the funds are not used for any other purpose, (c) an amount up to one thousand four hundred dollars in a separate bank account established by an individual while currently in receipt of assistance for the purpose of paying tuition at a two-year or four-year accredited post-secondary educational institution, so long as the funds are not used for any other purpose, (d) the home which is the usual residence of the household, (e) one automobile, up to ten thousand dollars fair market value, through March thirty-first, two thousand seventeen; one automobile, up to eleven thousand dollars fair market value, from April first, two thousand seventeen through March thirty-first, two thousand eighteen; and one automobile, up to twelve thousand dollars fair market value, beginning April first, two thousand eighteen and thereafter, or such other higher dollar value as the local social services district may elect to adopt, (f) one burial plot per household member as defined in department regulations, (g) bona fide funeral agreements up to a total of one thousand five hundred dollars in equity value per household member, (h) funds in an individual development account established in accordance with subdivision five of section three hundred fifty-eight of this chapter and section four hundred three of the social security act, (i) for a period of six months, real property which the household is making a good faith effort to sell, in accordance with department regulations and tangible personal property necessary for business or for employment purposes in accordance with department regulations, and (j) funds in a qualified tuition program that satisfies the requirement of section 529 of the Internal

Revenue Code of 1986, as amended, and (k) funds in a New York achieving a better life experience savings account established in accordance with article eighty-four of the mental hygiene law.

If federal law or regulations require the exemption or disregard of additional income and resources in determining need for family assistance, or medical assistance not exempted or disregarded pursuant to any other provision of this chapter, the department may, by regulations subject to the approval of the director of the budget, require social services officials to exempt or disregard such income and resources. Refunds resulting from earned income tax credits shall be disregarded in public assistance programs.

2. If and to the extent permitted by federal law and regulations, amounts received under section 105 of Public Law 100-383 as reparation payments for internment of Japanese-Americans and payments made to individuals because of their status as victims of Nazi persecution as defined in P.L. 103-286 shall be exempt from consideration as income or resources for purposes of determining eligibility for and the amount of benefits under any program provided under the authority of this chapter and under title XX of the Social Security Act.

3. The department is authorized to establish regulations defining income and resources. The department is further authorized to promulgate regulations it deems necessary to prevent the improper establishment and use of accounts for purchase of first or replacement vehicles.

* NB Effective until August 22, 2027

* § 131-n. Additional exemption of income and resources pursuant to federal law and regulations. 1. If federal law or regulations require, as a condition of qualifying for federal financial participation, the exemption or disregard of income and resources in determining need for aid to dependent children, or medical assistance not exempted or disregarded pursuant to any other provision of this chapter, the department may, by regulations subject to the approval of the director of the budget, require social services officials to exempt or disregard such income and resources. Such exemptions and disregards shall be limited solely to income resulting from increases in social security

benefits authorized by Public Law 92-336, and refunds required to be disregarded in federally aided programs by Public Law 94-164 for months prior to July first, nineteen hundred seventy-six, or any other federal law extending the requirement that refunds resulting from earned income tax credits be disregarded in federally aided programs.

2. If and to the extent permitted by federal law and regulations, amounts received under section 105 of Public Law 100-383 as reparation payments for internment of Japanese-Americans and payments made to individuals because of their status as victims of Nazi persecution as defined in P.L. 103-286 shall be exempt from consideration as income or resources for purposes of determining eligibility for and the amount of benefits under any program provided under the authority of this article and under title XX of the Social Security Act; provided, however, that such treatment shall be applied in the home relief program only to the extent that it is permitted under federal law in the program of aid to dependent children.

* NB Effective August 22, 2027

§ 131-o. Personal allowances accounts. 1. Each individual receiving family care, residential care or care in a school for individuals with developmental disabilities, or enhanced residential care as those terms are defined in section two hundred nine of this chapter, and who is receiving benefits under the program of additional state payments pursuant to this chapter while receiving such care, shall be entitled to a monthly personal allowance out of such benefits in the following amount:

* (a) in the case of each individual receiving family care, an amount equal to at least \$186.00 for each month beginning on or after January first, two thousand twenty-five.

* NB Effective until December 31, 2026

* (a) in the case of each individual receiving family care, an amount equal to at least \$191.00 for each month beginning on or after January first, two thousand twenty-six.

* NB Effective December 31, 2026

* (b) in the case of each individual receiving residential care, an

amount equal to at least \$213.00 for each month beginning on or after January first, two thousand twenty-five.

* NB Effective until December 31, 2026

* (b) in the case of each individual receiving residential care, an amount equal to at least \$219.00 for each month beginning on or after January first, two thousand twenty-six.

* NB Effective December 31, 2026

* (c) in the case of each individual receiving enhanced residential care, an amount equal to at least \$255.00 for each month beginning on or after January first, two thousand twenty-five.

* NB Effective until December 31, 2026

* (c) in the case of each individual receiving enhanced residential care, an amount equal to at least \$262.00 for each month beginning on or after January first, two thousand twenty-six.

* NB Effective December 31, 2026

* (d) for the period commencing January first, two thousand twenty-six, the monthly personal needs allowance shall be an amount equal to the sum of the amounts set forth in subparagraphs one and two of this paragraph:

(1) the amounts specified in paragraphs (a), (b) and (c) of this subdivision; and

(2) the amount in subparagraph one of this paragraph, multiplied by the percentage of any federal supplemental security income cost of living adjustment which becomes effective on or after January first, two thousand twenty-six, but prior to June thirtieth, two thousand twenty-six, rounded to the nearest whole dollar.

* NB Effective until December 31, 2026

* (d) for the period commencing January first, two thousand twenty-seven, the monthly personal needs allowance shall be an amount equal to the sum of the amounts set forth in subparagraphs one and two of this paragraph:

(1) the amounts specified in paragraphs (a), (b) and (c) of this subdivision; and

(2) the amount in subparagraph one of this paragraph, multiplied by the percentage of any federal supplemental security income cost of living adjustment which becomes effective on or after January first, two thousand twenty-seven, but prior to June thirtieth, two thousand

twenty-seven, rounded to the nearest whole dollar.

* NB Effective December 31, 2026

2. The personal allowance described in subdivision one of this section shall be made directly available to the individual for his own use in obtaining clothing, personal hygiene items, and other supplies and services for his personal use not otherwise provided by the residential facility. Any waiver of the right to a personal allowance by an individual entitled to it shall be void. The facility shall, for each such individual, offer to establish a separate account for the personal allowance. Each individual electing to utilize such an account shall be entitled to a statement upon request, and in any case quarterly, setting forth the deposits and withdrawals, and the current balance of the account. A facility shall not demand, require or contract for payment of all or any part of the personal allowance in satisfaction of the facility rate for supplies and services and shall not charge the individual or the account for any supplies or services that the facility is by law, regulation or agreement with the individual required to provide or for any medical supplies or services for which payment is available under medical assistance, pursuant to this title, medicare pursuant to title XVIII of the federal social security act, or any third party coverage. Any service or supplies provided by the facility, charged to the individual or the account shall be provided only with the specific consent of the individual, who shall be furnished in advance of the provision of the services or supplies with an itemized statement setting forth the charges for the services or supplies. Whenever a resident authorizes an operator of a facility to exercise control over his or her personal allowance such authorization shall be in writing and subscribed by the parties to be charged. Any such money shall not be mingled with the funds or become an asset of the facility or the person receiving the same, but shall be segregated and recorded on the facility's financial records as independent accounts.

3. Any individual who has not received or been able to control personal allowance funds to the extent and in the manner required by this section may maintain an action in his own behalf for recovery of any such funds, and upon a showing that the funds were intentionally

misappropriated or withheld to other than the intended use, for recovery of additional punitive damages in an amount equal to twice the amount misappropriated or withheld. The department may investigate any suspected misappropriation or withholding of personal allowance funds and may maintain an action on behalf of any individual to recover any funds so misappropriated, including any punitive damages. Any funds obtained as a result of such an action shall be disregarded in determining such individual's eligibility for or amount of benefits available pursuant to this chapter, to the extent permitted by federal law and regulation.

4. Each facility subject to the provisions of this section shall maintain in accordance with department regulations complete records and documentation of all transactions involving resident personal allowance accounts, and shall make such records available to the department and to any other agency responsible for the inspection and supervision of the facility upon request, with respect to any individual who is receiving additional state payments.

5. Any agency having supervisory responsibilities over any facility subject to the provisions of this section shall, at the time of any inspection of such a facility, inquire into the furnishing of and accounting for resident personal allowances, and shall report any violations or suspected violations of this section to the department. The department shall have primary responsibility for monitoring the personal allowance requirements of this section; provided, however, that the department may by cooperative agreement delegate such monitoring and enforcement functions, in whole or in part, with respect to any facility, to any other state agency having supervisory responsibilities over such facility.

6. At the time an individual ceases to be a resident at the facility maintaining a resident personal allowance account on his behalf, the funds in such account shall be transferred to such individual or another appropriate individual or agency for use on his behalf, in accordance with department regulations.

7. Any facility subject to the provisions of this section shall assure that any income of an individual residing therein that not considered in determining such individual's eligibility for or amount of benefits under the program of additional state payments pursuant to title six of article five of this chapter, other than unearned income paid from non-public sources for the purpose of meeting the cost, in part or in whole, of such person's care and maintenance in such a facility, is treated in the same manner as the personal allowance required to be made available to the individual pursuant to this section.

8. In any case in which a person receives a payment of additional state payment benefits for a month other than the month in which the payment is received, the full monthly personal allowance for the months to which the payment is attributable shall be made available to the individual at such time as the payment has been received; in no event shall the facility be found to have failed to comply with the provisions of this section solely by reason of having failed to make such monthly personal allowance available prior to the time such payment is actually received.

9. In addition to any damages or civil penalties to which a person may be subject;

(a) any person who intentionally withholds a resident's personal allowance, or who demands, beneficially receives, or contracts for payment of all or any part of a resident's personal allowances in satisfaction of the facility rate for supplies and services shall be guilty of a class A misdemeanor;

(b) any person who commingles, borrows from or pledges any personal allowance funds required to be held in a separate account shall be guilty of a class A misdemeanor.

§ 131-p. Group health insurance benefits; condition of eligibility. Notwithstanding any other inconsistent provision of law and to the extent permissible under federal law, any applicant for or recipient of safety net assistance or family assistance who is or becomes employed and whose employer provides group health insurance benefits, including

benefits for a spouse and dependent children of such applicant or recipient, shall apply for and utilize such benefits as a condition of eligibility for safety net assistance or family assistance. Such applicant or recipient shall also utilize such benefits provided by former employers as long as such benefits are available. The department shall promulgate regulations to determine the eligibility requirements of those applicants and recipients who have more than one employer offering group health insurance benefits.

The provisions of this section shall apply to such applicants upon their initial certification for family assistance or safety net assistance and to such recipients upon their recertifications for such assistance following the date on which this section becomes effective. The cost of premiums paid by such applicants or recipients for such coverage shall be deducted from such applicant's or recipient's earnings as an expense incident to his or her employment.

§ 131-q. Electronic payment file transfer system pilot project. * 1.

The commissioner is empowered to authorize the city social services district of the city of New York to continue the pilot project for the design, development, implementation and operation of an electronic payment file transfer system, in accordance with regulations of the department, as an alternative means of delivery of grants and allowances to public assistance recipients.

* NB Expired July 1, 1984

2. The city social services district is authorized to initiate activities to prepare for a city-wide conversion to the electronic payment file transfer system provided, however, the department shall conduct a hearing to elicit information concerning the effectiveness of such system and the impact of such system upon recipients, and such other matters as the department may deem relevant. Following such hearing, the commissioner may authorize city-wide implementation of such system.

3. A recipient residing in the city social services district in a

geographical area where the electronic payment file transfer system is in operation shall be required to receive his public assistance grants and allowances at a location designated by the social services district. A recipient who is subject to the provisions of this chapter relating to work requirements shall remain subject to such provisions regardless of the location where he receives his public assistance grants and allowances.

4. The provisions of subdivision one of this section shall expire on, and be of no further force and effect after July first, nineteen hundred eighty-four.

§ 131-r. Liability for reimbursement of public assistance benefits. 1. Any person who is receiving or has received, within the previous ten years, public assistance pursuant to the provisions of this article, and who wins a lottery prize of six hundred dollars or more shall reimburse the department from the winnings, for all such public assistance benefits paid to such person during the previous ten years; provided, however, that such crediting to the department shall in no event exceed fifty percent of the amount of the lottery prize. The commissioner shall enter into an agreement with the director of the lottery, pursuant to section sixteen hundred thirteen-b of the tax law, for the crediting of lottery prizes against public assistance benefits. Nothing herein shall limit the ability of a social services district to make recoveries pursuant to section 104 or section 106-b of this chapter.

2. Any inconsistent provision of this chapter or of any other law notwithstanding, a social services official may not assert any claim under any provision of this chapter to recover payments of public assistance if such payments were reimbursed by child support collections.

§ 131-s. Payments made for utility service for recipients of public assistance benefits, supplemental security income benefits or additional state payments. 1. In the case of a person applying for public

assistance, supplemental security income benefits or additional state payments pursuant to this chapter, the social services official of the social services district in which such person resides shall, unless alternative payment or living arrangements can be made, make a payment to a gas corporation, electric corporation or municipality for services provided to such person during a period of up to, but not exceeding, four months immediately preceding the month of application for such assistance or benefits if such payment is needed to prevent shut-off or to restore service. Persons whose gross household income exceeds the public assistance standard of need for the same size household must sign a repayment agreement to repay the assistance within two years of the date of payment as a condition of receiving assistance, in accordance with regulations established by the department. Such repayment agreement may be enforced in any manner available to a creditor, in addition to any rights the district may have pursuant to this chapter.

2. In the case of a person receiving public assistance, supplemental security income benefits or additional state payments pursuant to this chapter, the social services official of the social services district in which such person resides shall, unless alternative payment or living arrangements can be made, make a payment to a gas corporation, electric corporation or municipality for services provided to such person for the most recent four months in which service was rendered prior to the application for a utility payment pursuant to this section, provided that no such payment shall be made for services rendered more than ten months prior to the application for such a payment, and provided further that:

(a) such person does not have any funds to pay for such service and such payment is needed to prevent termination or to restore service and such person has fully applied his public assistance grant, if any, to purposes intended to be included in such grant, or

(b) such person in receipt of public assistance has made a written request of such official for an advance allowance for utility services already received pursuant to department regulations and has also made a written request that his monthly assistance grant be reduced by a portion of the amount of the advanced allowance, in such amounts as not to cause undue hardship. Such payment shall be in addition to any direct

payment or any guarantee of payment for utility service for the month for which timely payment may still be made. In no event may any part of such payment subject to recoupment be made unless the social services official first determines under the particular circumstances that the recipient is not entitled, at the time of requesting such payment, to a grant pursuant to titles one, three, eight or ten of this article or any other provision of this chapter which could be utilized to cover all or a portion to be advanced. If during the period of recoupment, the recipient becomes entitled to a grant, pursuant to titles one, three, eight or ten of this article or any other provision of this chapter, which could be utilized to cover all or a portion of the amount to be recovered, such grant shall be so utilized.

3. If and for so long as a person who has received a grant pursuant to subdivision two of this section continues to receive public assistance benefits, supplemental security income benefits or additional state payments, the social services official shall, to the extent authorized by applicable provisions of this chapter and regulations promulgated thereto, either:

(a) make payments directly to the gas corporation, electric corporation or municipality for utility services furnished to such person during a period in which such person has been determined unable to manage his own financial affairs; or

(b) act as guarantor of payment for the month in which the social services official is advised of the nonpayment and for such period of time thereafter as may be established by department regulations to the extent that such person fails to pay for utility services provided during any such month. Such guarantee of payment provided by the social services official shall not extend for a period exceeding two years for any person receiving public assistance, supplemental security income benefits or additional state payments.

(c) Payments made for recipients of public assistance pursuant to this subdivision shall be deemed to be advance allowances subject to recoupment in accordance with department regulations. In no event may any part of such payment subject to recoupment be made unless the social services official first determines under the particular circumstances that the recipient is not entitled, at the time of requesting such

payment, to a grant pursuant to titles one, three, eight or ten of this article or any other provision of this chapter which could be utilized to cover all or a portion to be advanced. If during the period of recoupment, the recipient becomes entitled to a grant, pursuant to titles one, three, eight or ten of this article or any other provision of this chapter, which could be utilized to cover all or a portion of the amount to be recovered, such grant shall be so utilized.

(d) Whenever a public assistance recipient, for whom a guarantee of payment has been provided pursuant to this subdivision, ceases to receive public assistance, the social services official shall notify the gas corporation, electric corporation or municipality of the cessation date in writing within fifteen days of such occurrence. In the case of a recipient of supplemental security income benefits, the social services official shall make such notification within fifteen days after receiving official notice that the recipient's benefits have ceased. The original terms and conditions of any guarantee made pursuant to this subdivision shall remain in full force and effect only until the end of any month in which the required notice is given.

4. The department shall establish by regulation the manner in which a person receiving public assistance, supplemental security income benefits or additional state payments pursuant to this chapter shall advise the appropriate social services official that payment for utility services furnished such person has not been made.

5. The social services official shall not make payments pursuant to this section with respect to any disputed amounts for utility service furnished for which a complaint has been filed with the gas corporation, electric corporation or municipality and no determination has been rendered by the gas corporation, electric corporation or municipality or for which a complaint has been filed with the public service commission and no determination has been made except to the extent payments are required by the commission or its staff pending resolution of the dispute by the commission. For purposes of applying the limitation on payments pursuant to subdivision two of this section in any case in which such a complaint has been filed with the public service commission, the date of any application made pursuant to this section

shall be deemed to be the date on which the complaint was filed, provided such application is made no later than thirty days from the date of resolution by the public service commission.

6. All monies owed the gas corporation, electric corporation or municipality by such person in excess of such payment as made by the social services official pursuant to this section while such person is in receipt of public assistance, supplemental security income benefits or additional state payments pursuant to this chapter may be reduced to a judgment, but shall be exempt from collection for so long as such person continues to receive or would become in need of public assistance, supplemental security income benefits or additional state payments if the collection was made. The claim of the gas corporation, electric corporation or municipality shall in all other respects remain unaffected.

§ 131-ss. Automated identification of OTDA assistance program participants. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Commissioner" shall mean the commissioner of the office of temporary and disability assistance.

(b) "Office" or "OTDA" shall mean the office of temporary and disability assistance.

(c) "OTDA assistance program participant" shall mean a household that is determined to be eligible by the office for any of the following programs, provided, however, that the office may require written consent from OTDA assistance program participants before using data obtained from any of the following programs for the purposes of this section:

(i) Public assistance;

(ii) Home energy assistance program; and

(iii) Any other income-based assistance program identified by the public service commission that is administered and approved for inclusion under this section by the office.

(d) "Utility corporation" shall include utility companies, utility corporations, public utility companies, public utility corporations, gas corporations, electric corporations, municipalities as defined in

section two of the public service law and regulated pursuant to the public service law, water-works corporations subject to section fifty of the public service law, a municipal corporation that provides public utility services, a rural electric cooperative, or a state public authority that provides utility services.

(e) "Utility corporation affordability programs" shall be defined by the public service commission and shall be limited to utility corporation programs which are intended to assist customers with energy or water service affordability by reducing customers' energy or water service burden, as applicable.

2. Within one year of the effective date of this section, the commissioner shall provide for automated identification of OTDA assistance program participants for participation in utility corporation affordability programs for energy affordability pursuant to subdivision four of this section. Within one year and six months of the effective date of this section, the commissioner shall provide for automated identification of OTDA program participants for participation in utility corporation affordability programs for water service affordability pursuant to subdivision four of this section.

3. The utility corporation shall be responsible for working with the office to facilitate and implement the technological capabilities to allow for the secure transmission of data through an interface with the office's information technology infrastructure.

4. (a) To the extent permitted by federal law, regulations and policies, the office, upon the utility corporation agreeing to and signing the office's data terms and upon receipt of the required data elements from the utility corporation, as such data elements are defined by the office, shall conduct automated file matching to identify utility corporation customer accounts that are also OTDA assistance program participants and, if permitted by federal law, regulations and policies, such information shall be provided to utility corporations no less than semi-annually. Utility corporation customer accounts identified by the office as potentially eligible for participation in available utility corporation affordability programs as a result of such file matching

shall be, if confirmed as eligible for such utility corporation affordability programs by the utility corporation, enrolled in such utility corporation affordability programs by the utility corporation within sixty days of receipt by the utility corporation of the results of the automated file match. Any information provided to the utility corporations related to OTDA assistance program participants pursuant to this section shall not be redisclosed by the utility corporation and shall only be utilized for the purpose of confirming eligibility in the utility corporation affordability program and providing notifications pursuant to paragraph (b) of this subdivision.

(b) Upon automatic enrollment in the utility corporation affordability program, the utility corporation shall provide written notification to the utility corporation affordability program participant of their enrollment in such program.

(c) Except as prohibited by federal law, regulation, or policy, and notwithstanding any provision of state or local law, regulation, or policy to the contrary, a utility corporation is authorized to share the required data elements for the purposes of and as provided for by this section.

5. The commissioner may adopt, on an emergency basis pursuant to article two of the state administrative procedure act, any rules necessary to carry out the provisions of this article.

6. The commissioner may delegate the administration of any portion of this section to any state agency, social services official, city, county, town, contractor or non-profit organization in accordance with the provisions of this article and applicable federal requirements. Provided however, such privacy and confidentiality limitations prescribed in this section shall apply to any entity to which the commissioner delegates the administration of any portion of this section.

§ 131-t. Periodic reporting. A social services official shall require each public assistance or food stamp household which currently is receiving or received earned income to submit periodic reports relating

to factors affecting eligibility, to the extent and in the manner required by department regulations.

§ 131-u. Domestic violence services. 1. Notwithstanding any inconsistent provision of law, a social services district shall, in accordance with the provisions of this section and regulations of the department, offer and provide emergency shelter and services at a residential program for victims of domestic violence, as defined in article six-A of this chapter, to the extent that such shelter and services are necessary and available to a victim of domestic violence, as defined in article six-A of this chapter, and in need of emergency shelter and services, who was residing in the social services district at the time of the alleged domestic violence.

2. The department shall annually establish, subject to the approval of the director of the budget, a daily rate of reimbursement for each residential program for victims of domestic violence, as defined in article six-A of this chapter, certified by the department which provides emergency shelter and services to persons eligible for such emergency shelter and services pursuant to this section. A social services district financially responsible for a victim of domestic violence shall reimburse a residential program for victims of domestic violence for the costs of emergency shelter and services provided to such victim at the daily reimbursement rate established by the department reduced by any other reimbursement available for such costs.

§ 131-v. Temporary emergency shelter. 1. Notwithstanding any inconsistent provision of law, and to the extent consistent with federal law, a social services official may contract with a non-profit corporation or charitable organization to provide temporary emergency shelter for eligible homeless households in dwelling units owned or leased, and operated by such corporations or organizations.

2. An allowance for such shelter may be made for households dwelling in such units if:

(a) no other suitable privately owned housing which meets the department's standards for health and safety is available, other than a more expensive hotel or motel; and

(b) no household was evicted to produce such units.

3. The continued need for such shelter shall be reviewed, evaluated and authorized monthly by a social services official. Such allowance shall not be available for more than six months unless the commissioner of the social services district determines on an annual basis that permanent housing is not readily available in the district and submits to the department such determination on an annual basis.

4. The social services district shall submit for approval by the department health and safety standards that such units must satisfy and shall inspect such units regularly to ensure that such standards are satisfied.

5. Such non-profit corporation or charitable organization shall, at a minimum, provide such households with assistance in obtaining permanent housing and with information regarding available counseling services, employment assessment, job training and job placement services, and child care services.

6. This section shall not be construed to limit other means of providing temporary emergency shelter otherwise permitted under this chapter and regulations promulgated thereunder.

§ 131-w. Limitations in the payment of rent arrears. Districts shall not provide assistance to pay rent arrears, property taxes or mortgage arrears for persons not eligible for home relief, aid to dependent children, emergency assistance to needy families with children or emergency assistance for aged, blind and disabled persons, except to persons who are without income or resources immediately available to meet the emergency need, whose gross household income does not exceed one hundred twenty-five percent of the federal income official poverty line and who sign a repayment agreement agreeing to repay the assistance

in a period not to exceed twelve months. The districts shall enforce the repayment agreements by any legal method available to a creditor, in addition to any rights it has pursuant to this chapter. The department shall promulgate regulations to implement this section which shall, among other things, establish standards for the contents of repayment agreements and establish standards to ensure that assistance is provided only in emergency circumstances.

§ 131-x. Reverse mortgage loans. Notwithstanding any other inconsistent provisions of law and to the extent permissible under federal law, regulation or waiver, the proceeds of a reverse mortgage loan made in conformity with the requirements of section two hundred eighty or two hundred eighty-a of the real property law or exempted therefrom pursuant to subdivision four of section two hundred eighty or subdivision four of section two hundred eighty-a of the real property law shall not be considered as income or resources of the mortgagor for any purpose under any law relating to food stamps, public assistance, veteran assistance, safety net assistance, low-income home energy assistance, federal supplemental security income benefits and/or additional state payments, medical assistance, any prescription drug plan or other payments, allowances, benefits or services available pursuant to this chapter; provided, however, that for applicants or for recipients of safety net assistance, any such reverse mortgage loan proceeds shall be disregarded as income and/or resources only in the event that, and for so long as, federal laws and regulations exempt loan proceeds in the determination of eligibility for both the aid to families with dependent children and supplemental security income programs.

§ 131-z. Child assistance program. 1. Notwithstanding any other provision of law to the contrary, any district may operate a child assistance program as part of the family assistance program with the approval of the department. Approved expenditures for such child assistance program shall be subject to federal and state reimbursement as expenditures under the family assistance program in accordance with

section one hundred fifty-three of this chapter. Provided, however, on or after January first, nineteen hundred ninety-eight the department shall reimburse social services districts for the administrative costs of this program in accordance with the provisions of subdivision sixteen of section one hundred fifty-three of this chapter. All custodial parent families receiving family assistance benefits shall be eligible for this program, provided they satisfy the requirements of this section, if they reside in a district which operates such a program.

2. Where a program has been authorized, child assistance payments pursuant to the provisions of this section may be made to custodial parents on behalf of minor children in accordance with the criteria specified in subdivisions three, four, five and six of this section in lieu of allowances determined in accordance with section one hundred thirty-one-a of this article. The amount of such child assistance payments shall be at least the sum of three thousand three hundred sixty dollars per annum for the first minor child and one thousand one hundred sixteen dollars per annum for each additional minor child, provided that such payments shall be reduced by the amounts specified in paragraph (a) of subdivision six of this section. The commissioner may develop a methodology which will provide for the periodic adjustment of the benefit level to reflect changes in maximum monthly grants and allowances authorized pursuant to section one hundred thirty-one-a of this article for the family assistance program. In addition, the child assistance payments shall be established so that the payments combined with earnings from full-time employment shall result in a family of three having income at or above the poverty level for nineteen hundred eighty-seven as reported by the federal department of health and human services.

3. No custodial parent who resides in a social services district or portion of such district in which a child assistance program is operated shall be eligible under this program for receipt of child assistance payments for a child, unless:

(a) An order of child support for such child has been made by a court of competent jurisdiction;

(b) The order of child support is payable through a support collection

unit as created by section one hundred eleven-h of this chapter or such other administrative mechanism as may be designated by the commissioner; or the custodial parent has cooperated in taking the necessary steps to ensure that the child support order is payable through a support collection unit or other administrative mechanism;

(c) The parent subject to a support order described in paragraphs (a) and (b) of this subdivision is absent from the home;

(d) The custodial parent and the child for whom, or on whose behalf an application for child assistance program payments is made is at such time, a recipient of family assistance benefits; and

(e) The custodial parent has not withdrawn from the program within the three months prior to the date of reapplication for benefits under this program.

4. Notwithstanding the provisions of subdivision three of this section, a custodial parent may be eligible under this program even though the custodial parent has failed to obtain an order of child support because:

(a) The other parent is deceased;

(b) The custodial parent has demonstrated to the satisfaction of the commissioner, a diligent effort to obtain a child support order, including providing the local social services district with the information necessary to file a petition for child support, but due to reasons outside of the control of the custodial parent, a child support order is not obtainable in a reasonable period of time;

(c) The custodial parent has good cause as defined in regulations, not to cooperate in obtaining a child support order; or

(d) The child resides with both parents and paternity has either been acknowledged or established.

5. A participant is no longer to be considered a participant in this program when such individual is not eligible for payments as a result of the operation of paragraph (a) of subdivision six of this section for four consecutive months.

6. (a) So long as funds are available therefor, the amount received by each custodial parent eligible to receive child assistance payments

pursuant to this section shall be reduced by an amount equal to:

(i) An amount which reflects a portion of the actual income of the custodial parent pursuant to a methodology to be established by the commissioner; and

(ii) An additional amount which reflects that portion of the custodial parent's spouse's income which is deemed to be available to other household members pursuant to a methodology to be established by the commissioner.

(b) Persons in receipt of both child assistance under this section and medical assistance pursuant to title eleven of article five of this chapter who, prior to April first, two thousand five, become ineligible for medical assistance solely due to increased earnings from employment or loss of earned income disregards shall, if otherwise eligible, remain eligible for medical assistance until March thirty-first, two thousand five or until such later time as may be required by the provisions of such title or of this subdivision. Such medical assistance shall be provided initially pursuant to paragraphs (a) and (b) of subdivision four of section three hundred sixty-six of this article.

(c) With respect to persons described in paragraph (b) of this subdivision, including those no longer in receipt of child assistance due to increased earnings from employment, when the medical assistance provided pursuant to paragraphs (a) and (b) of subdivision four of section three hundred sixty-six of this chapter ends, such persons, if ineligible for medical assistance solely due to earnings from employment or loss of earned income disregards shall, if otherwise eligible, remain eligible for medical assistance for an additional twelve months. However, in no event shall medical assistance be provided pursuant to this paragraph for any period that is more than twelve months after such persons cease to participate in the child assistance program.

(d) Social services districts shall take all necessary actions to provide medical assistance pursuant to paragraphs (a) and (b) of subdivision four of section three hundred sixty-six of this chapter to individuals described in paragraphs (b) and (c) of this subdivision who are eligible for such assistance. Social services districts shall provide to individuals described in paragraphs (b) and (c) of this subdivision information as to the availability of the child health insurance plan described in title one-A of article twenty-five of the

public health law.

7. Each participating social services district shall provide to all recipients eligible for participation in this program in accordance with the approved program a comparison of the benefits that would be available to the household under family assistance and the child assistance payments as provided in this section. Each participating district shall inform all eligible recipients that participation in this program is voluntary.

8. Participation in this program shall be voluntary. Should a participant elect to terminate his or her participation in this program, then, upon reapplication for family assistance benefits and a subsequent determination of eligibility, such participant shall be restored to benefits effective from the date of reapplication.

9. The department shall promulgate regulations for the operation of the child assistance program. Such regulations shall include but not be limited to:

(a) Resources. At program entry, program participants may not have resources which exceed the level permitted for eligibility for the family assistance program. Once eligible for the program, no further resource tests shall be imposed;

(b) Eligibility determinations. Program participants shall not be required to report changes in income more frequently than quarterly;

(c) Lump sums. If a child or relative participating in the program receives, in any month or months in a quarter, a non-recurring amount of earned or unearned income, the quarterly total of which exceeds one quarter of the annual poverty level for nineteen hundred eighty-seven for a family of the same size as the program household which received the lump sum, the case shall be ineligible for assistance for the whole number of quarters that equals the amount of the non-recurring income received, adjusted for any applicable disregards of income, divided by the quarterly poverty level applicable to the case;

(d) One hundred eighty-five percent of gross income test. Program participants shall be allowed to have income in excess of one hundred eighty-five percent of the state standard of need;

(e) Loss of eligibility. Non-compliance with a condition of eligibility shall result in the ineligibility of the whole family for the child assistance program;

(f) Determination of available income. Notwithstanding section one hundred thirty-one-a or any other provision of this chapter, determination of available income and the determination of income to be disregarded shall be in accordance with these regulations provided however that the methodology shall not be adjusted in a manner such that a household would receive a lower benefit than a similarly situated household would have received in January, nineteen hundred ninety-seven for the same amount of earned income; and

(g) Cash out of food stamps. To the extent permitted by federal law, program participants shall receive the value of their food stamps in cash.

(h) Child support pass through. The requirement that certain child support collected be passed through to the custodial parent pursuant to section one hundred eleven-c of this chapter shall not apply to persons participating in the child assistance program.

*** § 131-zz. Child poverty reduction.** 1. Legislative findings. The legislature hereby declares that New York should take any steps necessary to reduce the overall child poverty rate by fifty percent in the next ten years. Nearly three million New Yorkers are living in poverty, eight hundred ninety-five thousand of which are children. In fact, one in five New York children struggle to meet basic needs, and although several efforts have been undertaken, the overall poverty rate in New York has failed to see a reduction over the last decade. The legislature finds that reducing child poverty will protect the health and general well-being of all New Yorkers. To effectuate this reduction, the child poverty reduction advisory council shall be established to research policy ideas, develop best practices, and continually monitor relevant benchmarks to ensure that New York continues to work towards reducing child poverty by fifty percent in ten years.

2. Child poverty reduction advisory council established. (a) To effectuate a reduction in child poverty in the state, there is hereby

established an advisory council, to be known as the "child poverty reduction advisory council", hereafter referred to as the "advisory council". The advisory council shall carry out the required acts set forth in subdivision four of this section.

(b) The members of the advisory council shall be chaired by a representative of the executive chamber and the commissioner of the office of temporary and disability assistance, or their designees. Ensuring adequate geographic representation, members of the advisory council shall be appointed in the following manner:

(i) two members shall be appointed by the temporary president of the senate;

(ii) two members shall be appointed by the speaker of the assembly;

(iii) two members shall be appointed by the commissioner of the office of temporary and disability assistance;

(iv) at least one member shall be appointed by the governor from each of the following entities:

(1) the office of children and family services;

(2) the New York state council on children and families;

(3) the department of taxation and finance;

(4) a regional economic development council;

(5) a statewide non-profit poverty advocacy organization; and

(6) a non-profit organization with a focus on poverty issues; and

(v) two individuals who are directly impacted by poverty in the state.

(c) The members of the advisory council shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

(d) The advisory council shall convene within sixty days after the effective date of this section. A quorum shall consist of a majority of the members of the advisory council entitled to vote on the matter under consideration. Approval of any matter shall require the affirmative vote of a majority of the members voting thereon. The advisory council shall adopt by-laws for the management and regulation of its affairs, including the creation of committees and subcommittees to effectuate the work required.

3. Appointments to the advisory council. (a) Appointments to the advisory council shall be made no later than forty-five days after the

effective date of this section.

(b) If any such appointment is not made by such date, the appointing official may make the appointment after that date, but such vacant appointment shall not count for the calculation of a quorum until such vacancy is filled.

(c) Any vacancies in the advisory council shall be filled in the same manner as the original appointment was made.

4. Policy proposal review and recommendations. The advisory council shall:

(a) develop and publish a timeline, inclusive of yearly benchmarks, for reducing child poverty in the state by fifty percent in ten years. Such timeline shall be made publicly available.

(b) consider policy proposals that shall include, but not be limited to, the following proposals and release a report outlining the effect that the enactment of such proposals may have on the rate of childhood poverty in New York:

(i) expanding and strengthening the state's earned income tax credit to align with the state's minimum wage to cover individual taxpayer identification number filers and young, childless adults and to be paid out quarterly;

(ii) expanding and strengthening the state's child tax credit to include young children, and to eliminate the minimum income threshold;

(iii) expanding work training and employment programs in the state;

(iv) expanding access to subsidized housing; and

(v) expanding access to subsidized child care.

(c) investigate the effects that each of the proposals listed in paragraph (b) of this subdivision may have if enacted by itself, as well as the effect the proposals may have if enacted in conjunction with the other proposals, including related changes to federal policies. The advisory council shall include the cost to the state related to the implementation of such policies, as well as the projected savings in both the short and long term that the state could realize by reducing poverty.

(d) review agency programs that can be modified, suspended, or otherwise changed to immediately reduce the child poverty rate.

(e) deliver to the governor, the speaker of the assembly and the

temporary president of the senate, reports containing the timeline required pursuant to paragraph (a) of this subdivision, the review of the policy proposals required pursuant to paragraph (b) of this subdivision, the investigation of the effects of such policies pursuant to paragraph (c) of this subdivision and the review of agency programs required pursuant to paragraph (d) of this subdivision on or before eighteen months from the effective date of this section.

(f) develop recommendations for additional policies and procedures to reduce the state's child poverty rate by fifty percent in ten years from the effective date of this section. In developing such policies and procedures, the advisory council shall consider:

(i) the disproportionate impact poverty may have on various racial and ethnic communities and what policies may assist in alleviating such disparities;

(ii) ways to improve access to public benefits for individuals regardless of their immigration status;

(iii) policies that assist families to obtain and maintain financial stability, including policies that assist individuals with educational advancements as well as securing employment that provides a living wage; and

(iv) any other factors that may impact a family, parent, or child's ability to stay above the poverty level, including, but not limited to:

(1) stability and predictability of income;

(2) equitable and ready access to programs;

(3) equitable treatment across racial, immigration and ethnic groups;

(4) positive environmental conditions;

(5) the individual health and well-being of the parents and children; and

(6) the cost to the state, including the short-term costs of the programs and the long-term savings from having such programs in place.

(g) deliver to the governor, the speaker of the assembly and the temporary president of the senate the recommendations of the advisory council as required pursuant to paragraph (f) of this subdivision on or before two years after the effective date of this section.

(h) release annual reports starting September first, two thousand twenty-three, detailing the progress that the state has made in reducing the child poverty rate in line with the recommendations set forth in

this subdivision.

(i) collaborate with experts in the field of poverty research, utilize available data from other relevant statewide studies of poverty, and solicit input from stakeholder interests including, but not limited to persons impacted by poverty, non-profit organizations that assist those living in poverty, individuals or organizations that work to end racial disparities in New York, and child poverty advocacy organizations. The advisory council shall also conduct formal public hearings, which shall take place in at least four regions of the state, as defined by the empire state development corporation, and shall be offered during non-traditional hours to allow for persons unable to normally testify due to work requirements to so testify.

5. Implementation of recommendations. The legislature may utilize recommendations provided to prioritize the implementation of programs and services, as they deem appropriate, that would facilitate the goals of reducing child poverty by fifty percent over the next ten years from the effective date of this section.

6. Budget proposal review. No later than ten days after the governor offers any amendments to the executive budget submission pursuant to article seven of the constitution, the advisory council shall submit to the chairs of the senate finance committee and the assembly ways and means committee, a report analyzing the proposals contained within the executive budget submission that are expected by the advisory council to impact the child poverty rate.

7. Advisory council staff and agency liaison. (a) The commissioner of the office of temporary and disability assistance shall designate such employees of the office of temporary and disability assistance as are reasonably necessary to provide support services to the advisory council. The advisory council, acting by the chair of the advisory council, may employ additional staff and consultants, who shall be paid from amounts made available to the advisory council for such purpose.

(b) All state agencies, public authorities, and public benefit corporations shall provide such assistance as may be reasonably requested by the chair of the advisory council. Provided however, any

information provided shall be kept confidential and shall be used only for the specific purpose of effectuating the duties of the council.

8. Deliberations of the advisory council. The deliberations, meetings and other proceedings of the advisory council and any committee or subcommittee thereof shall be governed by article seven of the public officers law. Any one or more members of a committee or subcommittee may participate in a meeting of such committee or subcommittee by means of a conference telephone, conference video or similar communication or electronic communication, provided that such communication allows all persons participating in the meeting, and all persons observing the meeting, including members of the public, to hear each other at the same time. Participation by such means shall constitute presence at a meeting. If a meeting other than an executive session is to be conducted by means of a conference telephone, conference video or similar communication or electronic communication, the public notice for such meeting shall inform the public that such equipment will be used, and further identify the means by which the public may listen to such meeting.

* NB Repealed December 1, 2032

§ 132. Investigation of applications. 1. When an application for assistance or care is received, or a social services official is informed that a person is in need of public assistance and care, an investigation and record shall be made of the circumstances of such person. The object of such investigations shall be to secure the facts necessary to determine whether such person is in need of public assistance or care and what form thereof and service he or she should receive. Information shall be sought as to the residence of such person, the name, age, religious faith, physical condition, earnings or other income, and ability to work of all members of the family, the cause of the person's condition, the ability and willingness of the family, relatives, friends and church to assist, and such other facts as may be useful in determining the treatment which will be helpful to such person. However, nothing in this subdivision or elsewhere in this chapter contained shall be construed to require a social services

official to communicate with or require assistance from any person or persons liable by law to contribute to the support of a woman pregnant with, or the mother of, an out of wedlock child, in need of care away from home during pregnancy and during and after delivery, in the case where the surrender of the child to the social services official is under consideration, for such period as may be necessary for such mother and official to decide whether the child will be surrendered for adoption to such official, which period shall not extend beyond ninety days after birth of the child. Except where the welfare official is in possession of positive proof that the applicant is receiving or is eligible to receive unemployment insurance benefits and the amount thereof such investigations shall include written request to the commissioner of labor or his or her duly authorized officer charged with administration of the unemployment insurance law for information as to the status of such person in respect to unemployment insurance benefits.

2. (a) All applications received by a town social services officer shall be forwarded to the county commissioner immediately and all such applications shall be investigated by the staff of the county commissioner. After investigation the county commissioner shall return to the town social services officer every application for safety net assistance made by a person residing or found in such town, together with his or her recommendation as to the eligibility of the applicant and the amount of assistance to be granted, if any. In addition thereto, the county commissioner shall keep the town social services officer currently informed of persons residing in his or her town who are receiving any form of public assistance and care other than safety net assistance.

(b) In a city social services district, investigation of applications shall be made by the city commissioner of social services and his staff.

(c) In a city which is functioning under section seventy-four-a of this chapter, investigation shall be made by the county commissioner of social services and his staff.

3. The commissioner of the department of family assistance shall provide by regulation for methods of determining eligibility for public assistance and care, other than medical assistance, to be utilized by

all social services officials. Such regulations shall provide for methods of verifying information supplied by or about recipients with information contained in the wage reporting system established pursuant to section one hundred seventy-one-a of the tax law and similar systems in other geographically contiguous states, and, to the degree mandated by federal law with the non-wage income file maintained by the United States internal revenue service, with the benefits and earnings data exchange maintained by the United States department of health and human services, and with the unemployment insurance benefit file.

4. (a) Investigation into the cause of the condition of a head of household or of any adult applicant or recipient and the treatment which will be helpful to such person shall include a screening for alcohol and/or substance abuse using a standardized screening instrument to be developed by the office of addiction services and supports in consultation with the department. Such screening shall be performed by a social services district at the time of application and periodically thereafter but not more frequently than every six months, unless the district has reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs, in accordance with regulations promulgated by the department. Such screening may be conducted by telephone or other digital means at the request of the applicant or recipient.

(b) When the screening process indicates that there is reason to believe that an applicant or recipient is abusing or dependent on alcohol or drugs, the social services district shall require a formal alcohol or substance abuse assessment, which may include drug testing, to be performed by an alcohol and/or substance abuse professional credentialed by the office of addiction services and supports. Provided however, if the applicant or recipient tests positive for the presence of cannabis, the positive result alone shall not be sufficient to establish a dependence for purposes of requiring an individual to participate in a treatment program pursuant to paragraph (c) of this subdivision. The assessment may be performed directly by the district or pursuant to contract with the district. Such assessment may be conducted by telephone or other digital means at the request of the applicant or recipient.

(c) The social services official shall refer applicants and recipients whom it determines are presently unable to work by reason of their need for treatment for alcohol or substance abuse based on the formal assessment to a treatment program licensed or certified by the office of alcoholism and substance abuse services or operated by the United States office of veterans affairs and determined by the social services official to meet the rehabilitation needs of the individual. When residential treatment is appropriate for a single custodial parent, the social services official shall make diligent efforts to refer the parent to a program that would allow the family to remain intact for the duration of the treatment.

(d) A person who fails to participate in the screening or in the assessment shall be ineligible for public assistance. Other members of a household which includes a person who has failed to participate in the screening or assessment shall, if otherwise eligible, receive public assistance only through safety net assistance if they are otherwise eligible for public assistance.

(e) A person referred to a treatment program pursuant to paragraph (c) of this subdivision, and the household with which he or she resides shall receive safety net assistance while the person is participating in such treatment, if the household is otherwise eligible for public assistance. If a person referred to treatment cannot participate in that treatment because treatment is not presently available, that person and the household with which he or she resides shall receive safety net assistance if the household is otherwise eligible for public assistance.

(f) If an applicant or recipient is required, pursuant to paragraph (c) of this subdivision, to participate in an appropriate rehabilitation program and refuses to participate in such program without good cause or leaves such program prior to completion of the program without good cause, provided that program completion shall be solely determined by the guidelines and rules of such rehabilitation program, or if an applicant or recipient has been suspended from the receipt of social security disability benefits or supplemental security income benefits by reason of noncompliance with requirements of the federal social security administration for treatment for substance abuse or alcohol abuse, the person will be disqualified from receiving public assistance as follows:

(i) for the first failure to participate in or complete the program,

until the failure ceases or for forty-five days, whichever period of time is longer;

(ii) for the second such failure, until the failure ceases or for one hundred twenty days, whichever period of time is longer; and

(iii) for the third and subsequent failures, until the failure ceases or for one hundred eighty days, whichever period is longer.

Good cause shall be defined in regulations by the commissioner.

The household with which the person resides shall continue to receive safety net assistance if otherwise eligible.

(g) Persons disqualified from receiving public assistance pursuant to paragraph (f) of this subdivision who would otherwise be eligible for public assistance and who return to required treatment prior to the end of the disqualification period and are receiving residential care as defined in paragraph (d) of subdivision three of section two hundred nine of this chapter shall be eligible for safety net assistance.

(h) Notwithstanding any inconsistent provision of section one hundred thirty-one-o of this article, if a recipient required to participate in an appropriate treatment program pursuant to paragraph (c) of this subdivision receives a personal needs allowance, such allowance shall be made as a restricted payment to the treatment program and shall be a conditional payment. If such recipient leaves the treatment program prior to the completion of such program, any accumulated personal needs allowance will be considered an overpayment and returned to the social services district which provided the personal needs allowance.

(i) Compliance with the provisions of this subdivision shall not be required as a condition of applying for or receiving medical assistance.

§ 132-a. Children born out of wedlock; special provisions. 1. When an investigation is required by section one hundred thirty-two and other provisions of this chapter for the purpose of determining the eligibility for public assistance and care of an applicant pregnant with or who is the mother of an out of wedlock child such investigation shall include diligent inquiry into the paternity of such child.

2. Except when the surrender of the child to the social services official for the purpose of adoption is under consideration in accordance with the provisions of section one hundred thirty-two, and except when the child has been surrendered to the social services official for the purpose of adoption, the social services official shall communicate with and require support from any person liable by law to contribute to the support of such applicant or her child.

3. In appropriate cases, such applicant shall be required to file a petition in the family court instituting proceedings to determine the paternity of her child, and she shall be required to assist and cooperate in establishing such paternity. However, such a petition shall not be required to be filed if the child has been surrendered to the social services official for adoption or if such surrender is under consideration in accordance with the provisions of section one hundred thirty-two.

4. In any case where the social services official has decided, in accordance with the provisions of section one hundred thirty-two, not to conduct an investigation, a written report of such decision and the basis therefor shall be made in duplicate to the department, upon forms prescribed by the department, within thirty days after the making thereof.

§ 133. Temporary preinvestigation emergency needs assistance or care. Upon application for public assistance or care under this chapter, the local social services district shall notify the applicant in writing of the availability of a monetary grant adequate to meet emergency needs assistance or care and shall, at such time, determine whether such person is in immediate need. If it shall appear that a person is in immediate need, emergency needs assistance or care shall be granted pending completion of an investigation. The written notification required by this section shall inform such person of a right to an expedited hearing when emergency needs assistance or care is denied. A public assistance applicant who has been denied emergency needs assistance or care must be given reason for such denial in a written

determination which sets forth the basis for such denial. Nothing in this section shall be construed to require the social services district or any state agency to provide medical assistance, except as otherwise required by title eleven of this article.

§ 133-a. Contracts for distribution of public assistance grants. As permitted or required by regulations of the department, each social services district may contract with an appropriate department or agency of the state or banking institutions to distribute grants and allowances of public assistance to the grantees thereof.

§ 134. Supervision. The social service officials responsible under section one hundred thirty-two for investigating any application for public assistance and care, shall maintain close contact with persons granted public assistance and care. Such persons shall be visited as frequently as is provided by the regulations of the department or required by the circumstances of the case, in order that any treatment or service tending to restore such persons to a condition of self-support and to relieve their distress may be rendered and in order that assistance or care may be given only in such amount and as long as necessary. Persons receiving care in an institution shall be visited as often as may be necessary in order that any service or care needed by them shall be provided and in order that institutional care shall be given only as long as it is advantageous for the person's welfare. The circumstances of a person receiving continued care shall be reinvestigated as frequently as the regulations of the department may require.

§ 134-a. Conduct of investigation. 1. In accordance with regulations of the department of family assistance, any investigation or reinvestigation of eligibility for public assistance and care, other than medical assistance, shall be limited to those factors reasonably necessary to insure that expenditures shall be in accord with applicable provisions of this chapter and the regulations of the department and

shall be conducted in such manner so as not to violate any civil right of the applicant or recipient. Such regulations of the department shall provide that where inconsistencies and gaps in the information presented by a recipient or where other circumstances in the particular case would indicate to a prudent person, that further inquiry should be made, additional necessary information is to be sought except further that the department shall provide by regulations which are consistent with federal law for matching of data supplied by or about recipients with information contained in the wage reporting system established pursuant to section one hundred seventy-one-a of the tax law and similar systems in other geographically contiguous states, and such regulations shall further provide to the extent mandated by federal law for matching with the non-wage income file maintained by the United States internal revenue service, with the benefits and earnings data exchange maintained by the United States department of health and human services, and with the unemployment insurance benefits file. In making such investigation or reinvestigation, sources of information, other than records maintained by a public agency, shall be consulted only with the permission of the applicant or recipient. However, if such permission is not granted by the applicant or recipient, the appropriate social services official may deny, suspend or discontinue public assistance or care until such time as he may be satisfied that such applicant or recipient is eligible therefor. Nothing in this section shall be construed to prohibit activities the department reasonably believes necessary to conform with Federal requirements under section one thousand one hundred thirty-seven of the social security act. The activities authorized by this section may be initiated only with regard to those clients who have been given appropriate notice of verification activity under article six-A of the public officers law.

2. At the time he applies for public assistance and care, an applicant shall, as a condition of receiving such aid, present proof of his identity to the social services official as the department may by regulation require, and he shall provide such proof thereafter whenever required by such official.

3. The social services official shall require that persons applying

for or receiving public assistance and care be interviewed personally at a time and in a manner provided by the regulations of the department, and the social services official may provide the option of a phone interview or other digital means for such interview at the request of the applicant or recipient.

4. Notwithstanding any other provisions of this chapter, the department may provide for a comparison of information identifying a recipient of benefits under any program authorized under this chapter with identifying information possessed by state agencies in other states administering programs similar to those authorized by this chapter regarding recipients of such programs. Such a comparison shall be authorized only with regard to clients who have received appropriate notice under the personal privacy protection law, which notice shall be deemed compliance with the provisions of subdivision one of this section. Should the comparison of identifying information indicate that the client in question is or has been simultaneously receiving benefits in both states, the department may, in its discretion, authorize exchange of income, benefit, and other case information with the state agency of the other state.

5. The social services official upon receipt of information concerning a sentence of imprisonment imposed upon a person receiving public assistance shall make a reinvestigation of eligibility.

§ 134-b. Front end detection system. In accordance with regulations promulgated by the department, each social services district shall establish procedures to identify, investigate and resolve potential cases of fraud, misrepresentation or inadequate documentation prior to determining an applicant's eligibility for public assistance. Such procedures shall not delay the determination of eligibility for assistance beyond the timeframes established in law or regulation for such determination, including emergency assistance. Each social services district shall submit to the department a plan describing such procedures in such form and at such times as the department may require. Such department regulations shall include, but not be limited to,

standards governing referrals by the district to its fraud detection unit, and shall set forth indicators to be used, in part, to govern such referrals based on the individual's employability, employment history, or prior incidence of overpayments attributable to client conduct.

§ 134-c. Requirement to publicly post information. 1. Each local social services district shall be required to post information in accordance with this section, in a form and manner to be determined by the commissioner. Such poster shall be conspicuous and visible to all applicants and/or recipients of public assistance who are applying for assistance and be at least eight and one-half inches by eleven inches in size. Such information shall also be posted on the office of temporary and disability assistance's website.

2. Such information shall include, but not be limited to, informing individuals who are applying to receive assistance that they have the right to:

- (a) a fair hearing;
 - (b) ask about emergency assistance;
 - (c) apply for all benefits and services;
 - (d) ask about child care;
 - (e) free language services;
 - (f) screening and special services if experiencing domestic violence;
- and
- (g) a written adequate notice.

§ 135. Cooperation of public welfare officials. 1. It shall be the duty of every public welfare official to render assistance and cooperate within his jurisdictional powers with every other public welfare official and with the family court and all other governmental agencies concerned with the health and welfare of persons under their jurisdiction.

2. Every public welfare official shall also cooperate whenever possible with any private agency whose object is the relief and care of

persons in need or the improvement of social conditions in order that there may be no duplication of relief and that the work of agencies both public and private may be united in an effort to relieve distress and prevent dependency.

§ 136. Protection of public welfare records. 1. The names or addresses of persons applying for or receiving public assistance and care shall not be included in any published report or printed in any newspaper or reported at any public meeting except meetings of the county board of supervisors, city council, town board or other board or body authorized and required to appropriate funds for public assistance and care in and for such county, city or town; nor shall such names and addresses and the amount received by or expended for such persons be disclosed except to the commissioner of social services or his authorized representative, such county, city or town board or body or its authorized representative, any other body or official required to have such information properly to discharge its or his duties, or, by authority of such county, city or town appropriating board or body or of the social services official of the county, city or town, to a person or agency considered entitled to such information. However, if a bona fide news disseminating firm or organization makes a written request to the social services official or the appropriating board or body of a county, city or town to allow inspection by an authorized representative of such firm or organization of the books and records of the disbursements made by such county, city or town for public assistance and care, such requests shall be granted within five days and such firm or organization shall be considered entitled to the information contained in such books and records, provided such firm or organization shall give assurances in writing that it will not publicly disclose, or participate or acquiesce in the public disclosure of, the names and addresses of applicants for and recipients of public assistance and care except as expressly permitted by subdivision four. If such firm or organization shall, after giving such assurance, publicly disclose, or participate or acquiesce in the public disclosure of, the names and addresses of applicants for or recipients of public assistance and care except as expressly permitted by subdivision four, then such firm or organization

shall be deemed to have violated this section and such violation shall constitute a misdemeanor. As used herein a news disseminating firm or organization shall mean and include: a newspaper; a newspaper service association or agency; a magazine; a radio or television station or system; a motion picture news agency.

2. All communications and information relating to a person receiving public assistance or care obtained by any social services official, service officer, or employee in the course of his or her work shall be considered confidential and, except as otherwise provided in this section, shall be disclosed only to the commissioner, or his or her authorized representative, the commissioner of labor, or his or her authorized representative, the commissioner of health, or his or her authorized representative, the welfare inspector general, or his or her authorized representative, the county board of supervisors, city council, town board or other board or body authorized and required to appropriate funds for public assistance and care in and for such county, city or town or its authorized representative or, by authority of the county, city or town social services official, to a person or agency considered entitled to such information. Nothing herein shall preclude a social services official from reporting to an appropriate agency or official, including law enforcement agencies or officials, known or suspected instances of physical or mental injury, sexual abuse or exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child of which the official becomes aware in the administration of public assistance and care nor shall it preclude communication with the federal immigration and naturalization service regarding the immigration status of any individual.

3. Nothing in this section shall be construed to prevent registration in a central index or social service exchange for the purpose of preventing duplication and of coordinating the work of public and private agencies.

4. No person or agency shall solicit, disclose, receive, make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of, any information relating to any applicant for or recipient of public

assistance or care for commercial or political purposes. Nothing in this or the other subdivisions of this section shall be deemed to prohibit bona fide news media from disseminating news, in the ordinary course of their lawful business, relating to the identity of persons charged with the commission of crimes or offenses involving their application for or receipt of public assistance and care, including the names and addresses of such applicants or recipients who are charged with the commission of such crimes or offenses.

5. A social services official shall disclose to a federal, state or local law enforcement officer, upon request of the officer, the current address of any recipient of family assistance, or safety net assistance if the duties of the officer include the location or apprehension of the recipient and the officer furnishes the social services official with the name of the recipient and notifies the agency that such recipient is fleeing to avoid prosecution, custody or confinement after conviction, under the laws of the place from which the recipient is fleeing, for a crime or an attempt to commit a crime which is a felony under the laws of the place from which the recipient is fleeing, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of that state, or is violating a condition of probation or parole imposed under a federal or state law or has information that is necessary for the officer to conduct his or her official duties. In a request for disclosure pursuant to this subdivision, such law enforcement officer shall endeavor to include identifying information to help ensure that the social services official discloses only the address of the person sought and not the address of a person with the same or similar name.

§ 136-a. Information from state tax commission and the comptroller. 1. Section six hundred ninety-seven or any other provision of the tax law shall in no way be construed to restrict the department from obtaining, on behalf of itself or a local social services district, the name, address, social security number, employment history and number of dependents claimed for any individual certified by the department to be a welfare recipient and suspected of abusing, defrauding or otherwise violating the welfare system.

2. Information furnished to the department by the state tax commission and the comptroller under or as a result of the agreement authorized by section one hundred seventy-one-c of the tax law shall be considered confidential and shall not be disclosed to persons or agencies other than those entitled to such information because such disclosure is necessary for the proper administration of title six-A of article three and title ten of article five of this chapter.

§ 137. Exemption from levy and execution. All moneys or orders granted to persons as public assistance or care pursuant to this chapter shall be inalienable by any assignment or transfer and shall be exempt from levy and execution under the laws of this state.

§ 137-a. Exemption of earnings of recipients from assignment, income execution and installment payment order. 1. All wages, salary, commissions or other compensation paid or payable by an employer to a person while he is in receipt of public assistance or care supplementary to his income pursuant to the provisions of titles three, four, five, six and ten of article five of this chapter, or while he would otherwise need such assistance or care, shall be exempt from assignment, income execution or from an installment payment order under the laws of this state but only so long as such public assistance or care, shall continue or would be needed if the assignment, income execution or installment payment order were enforced. The claim of the creditor shall in all other respects remain unaffected. Any employer who shall withhold or pay over to a person presenting an income execution installment payment order or assignment, any portion of the earnings of such a recipient of public assistance or care, after receiving notification in writing from a social services official that the employee is receiving public assistance or care, or that he would become in need of public assistance or care if the assignment, income execution or installment payment order were enforced, shall be liable in an action by such recipient for the amount so paid or withheld contrary to the provisions of this section. A social services official sending such notification to an employer shall

be required to notify the employer, in writing, of the termination of such receipt and need for public assistance and care of the employee involved when this shall occur. Upon receipt of such notice of termination the employer may commence or resume, as the case may be, payment and withholding under any assignment, income execution or installment payment order whose effectiveness was postponed or suspended by this section.

2. As used in this section, "public assistance and care" shall include federal supplemental security income benefits paid pursuant to title sixteen of the federal social security act and additional state payments paid pursuant to title six of article five of this chapter.

§ 138-a. Responsibility of the department for recipients in family care. 1. Any inconsistent provision of this chapter or other law notwithstanding, the department shall be responsible for furnishing public assistance and care to mentally disabled persons residing in family care homes licensed by the office of mental health or the office for people with developmental disabilities who are admitted to such facilities in accordance with regulations of the office which licenses the facility. However, the department may, at its option, discharge such responsibility, in whole or in part, through social services districts designated to act as agents of the department. While so designated, a social services district shall act as agent of the department and shall be entitled to reimbursement as provided in section one hundred fifty-three of this article.

2. The department shall possess and may exercise like powers and perform like duties in respect to the assistance and care of persons in family care as social services officials exercise and perform in relation to persons in their respective jurisdictions.

§ 139-a. Special provisions to avoid abuse of assistance and care. 1. Any person who shall apply for safety net assistance or family assistance within one year after arrival in this state, shall be

presumed to have come into the state for the purpose of receiving public assistance or care and the social services official where application is made, shall deny public assistance and care to such applicant unless such applicant shall establish by clear and convincing proof that the purpose of his or her entry was not for the purpose of securing public assistance and care in this state. In addition to complying with the foregoing provisions, the applicant shall also submit with his or her application a certificate from the appropriate local employment office of the state department of labor issued within a two week period from the date of his or her application stating that such employment office has no order for an opening in part-time, full-time, temporary or permanent work of any kind to which the applicant could properly be referred by such office, taking into consideration only his or her physical and mental capacity without reference to his or her customary occupation or acquired skill.

2. The social services official shall in every case complete his investigation and make his determination of the application under this section not more than thirty days after receipt of the application.

3. (a) The social services districts of Allegany, Broome, Dutchess, Niagara, Onondaga, Oneida, Orange, Oswego, Rensselaer, Rockland, Steuben, and Suffolk shall authorize and implement demonstration projects for the purposes of determining the cost-effectiveness of preventing multiple enrollment of home relief benefit recipients through the use of an automated two-digit finger imaging matching identification system. The system shall only include home relief benefit recipient finger imaging upon application for eligibility for such benefits and finger imaging of home relief recipients currently receiving home relief benefits.

(b) Notwithstanding the provisions of section one hundred thirty-six of this article or any other provision of law, data collected and maintained through the use of an automated finger imaging matching identification system as authorized by this subdivision may not be used, disclosed or redisclosed for any purpose other than the prevention of multiple enrollments in home relief, may not be used or admitted in any criminal or civil investigation, prosecution, or proceeding, other than

a civil proceeding pursuant to section one hundred forty-five-c of this article, and may not be disclosed in response to a subpoena or other compulsory legal process or warrant, or upon request or order of any agency, authority, division, office or other private or public entity or person, except that nothing contained herein shall prohibit disclosure in response to a subpoena issued by or on behalf of the applicant or recipient who is the subject of the record maintained as a part of such system. Any person who knowingly makes or obtains any unauthorized disclosure of data collected and maintained through the use of an automated two-digit finger imaging matching identification system shall be guilty of a class A misdemeanor, and shall be punished in accordance with the provisions of the penal law.

(c) Data collected and maintained on the automated two-digit finger imaging matching identification system shall be subject to those provisions relating to unauthorized disclosure of confidential client information currently subject to part 357 of the commissioner's regulations.

(d) Such social services districts shall develop a competitive request for proposal for an automated two-digit finger imaging matching identification system, and shall thereafter contract for the services of a firm certified by the department as able to design and implement such automated two-digit finger imaging matching identification system. The department shall oversee the process by which districts select and award contracts for the demonstration projects. Prior to the implementation of any contracts, the department shall certify that a system exists for data collection and for destroying and expunging a recipient finger image upon such recipient ceasing to be a home relief recipient and that the design of the demonstration project fulfills all the requirements of this section. The department shall provide such assistance as needed to facilitate finger image matching among social services districts including centralized sharing of data when local matching among social services districts is not feasible. After award the department shall be responsible for ensuring that the demonstration projects are carried out in accordance with the requirements of this section, that adequate training for local district staff involved with the project will be provided and taking any actions necessary to bring such programs into compliance if required. Such contractual arrangement shall ensure that

state payments for the contractor's necessary and legitimate expenses for the administration of such program are limited to amounts specified in advance and that such amounts shall not exceed the amount appropriated therefor in any fiscal years.

(e) Immediate notice of all the provisions of this subdivision shall be provided to home relief recipients or applicants.

(f) Notwithstanding any other provision of law, nothing contained herein shall be deemed to authorize or permit the termination, suspension, or diminution of home relief benefits except as elsewhere specifically authorized in this chapter, provided, however, that where the basis of a proposed sanction is a determination of a fraudulent multiple enrollment based on the use of an automated finger imaging matching identification system authorized pursuant to this section, no such sanction shall be imposed pending a hearing conducted pursuant to section twenty-two of this chapter within forty-five days of the notification of the applicant or recipient of the alleged fraudulent multiple enrollment, or pending a final determination of a request by an applicant or a recipient for correction or amendment of a record pursuant to section ninety-five of the public officers law, and no such sanction shall be imposed unless the local social services district has verified the results of the automated finger imaging matching identification system by means of a manual match conducted by a person who is qualified to perform such identifications.

(g) The department shall conduct periodic audits to monitor compliance with all laws and regulations regarding the automated finger imaging matching system to insure that any records maintained as part of such system are accurate and complete, that no illegal disclosures of such records have taken place, that effective software and hardware designs have been instituted with security features to prevent unauthorized access to such records, that access to record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library is restricted to authorized personnel only, that operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than automated finger imaging matching system terminals which are so designated, that operational programs are used to detect and store for the output of designated department employees all

unauthorized attempts to penetrate any automated finger imaging matching system, program or file, that adequate and timely procedures exist to insure that the recipient or applicant's right to access and review of records for the purpose of accuracy and completeness, including procedures for review of information maintained about such individuals and for administrative review (including procedures for administrative appeal) and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete.

(h) The department shall report to the speaker of the assembly and the temporary president of the senate on the operation of the demonstration project by March first, nineteen hundred ninety-six. This report shall include analysis of the cost-effectiveness of such project, and shall include information concerning instances of multiple enrollment detected through use of this system, and shall include a detailed summary of the results of audits required by paragraph (g) of this subdivision. The report shall include recommendations regarding whether the program should be discontinued, expanded, or otherwise modified.

(i) The department of social services shall contract with an independent academic or research organization (the "contractor") experienced in evaluating public assistance programs for a comprehensive evaluation of the automated finger imaging matching identification system authorized in this section. The results of such evaluation shall be set forth in a report which shall include, but not be limited to the following:

(1) a description of the demonstration project, its implementation schedule and the problems encountered in implementation;

(2) investigations of each instance where a recipient does not respond to a notice informing the recipient of the need to submit to finger imaging. Such investigation shall determine, to the extent possible, why the recipient did not respond and whether such failure to respond was due to the recipient: (a) becoming eligible for federal supplemental security income benefits, if any; (b) no longer being eligible because of earned income, if any; (c) no longer being a resident of the county, if any; or (d) failing to respond because of other reasons;

(3) an evaluation of historical caseload trends, both statewide and in the demonstration counties, including a study of monthly records for the

two years prior to the demonstration, and also including the closing of cases at recertification. Analysis of such monthly records shall be conducted as part of the basis of estimating benefits under the demonstration;

(4) an analysis of the procedures used to verify suspicions of fraud including follow-up of identified cases of fraud, if any;

(5) aggregate totals of false matches, if any, found by the system, the methods used to correct such errors and an accounting of the duplicate applications for benefits, if any, that are detected by the system; and

(6) an estimate of the savings, if any, resulting from the implementation of finger imaging, and an estimate of the actual costs of the system including, but not limited to equipment costs, the costs of linking terminals, site preparation and the costs of any additional staff required to operate the system.

(j) Not later than February first, nineteen hundred ninety-six, the contractor shall submit the report required by paragraph (i) of subdivision three of this section to the governor, the majority leader of the senate and the speaker of the assembly and to the commissioner of the department of social services.

(k) The local social service districts establishing an automated finger imaging matching identification system pursuant to this subdivision shall be deemed an agency as defined in subdivision one of section ninety-two of the public officers law, and data collected and maintained in such automated system shall be deemed records and systems of records as defined in subdivisions nine and eleven of such section of such law. Except as otherwise specifically provided in this section, the provisions of article six-a of such law, known as the "personal privacy protection law" shall apply to the records and systems of records collected and maintained by such local social service districts pursuant to this section.

(l) Expenditures made by social services districts, and determined cost effective by the department, including those expenditures necessary for contracts planned or executed on or before the effective date of this section, for the design, development, implementation and administrative costs of the automated finger imaging matching identification system shall be subject to one hundred percent state

reimbursement.

(m) The automated finger imaging matching identification system shall be established in the selected districts not later than October first, nineteen hundred ninety-four, and such demonstration projects shall expire upon the enactment of a chapter of the laws of nineteen hundred ninety-five providing for an automated fraud prevention system based on personally unique identification factors.

§ 141. Burial of the dead. 1. (a) If a recipient of public assistance or care or other person dies leaving no funds or insurance sufficient to pay the expense of his burial, the relatives who survive him who were or would have been responsible for his support, pursuant to section one hundred one of this chapter, shall be responsible for such expense to the extent that they are able to pay the same in whole or in part; and the public welfare official paying such expense or any part thereof may recover all or part of the amounts expended by him from such relatives, who shall be severally and jointly liable therefor in accordance with their respective abilities.

(b) Except as otherwise provided the public welfare district, town or city which was or would have been responsible for furnishing public assistance or care to the person while alive shall provide for the care, removal and burial of the body of a recipient of public assistance or care who shall die, or of a person found dead in the public welfare district.

2. If, when such provision is made by a public welfare district, town or city, the deceased leave no funds or insurance sufficient to pay the expense of his burial and there are no known relatives, friends or personal representatives liable or willing to become responsible for such expense, the expense of such burial shall be a charge on such public welfare district, town or city but the public welfare official thereof may recover the same in whole or in part from the relatives of the deceased liable therefor.

3. (a) When burial arrangements for a recipient of public assistance or care are made by relatives or friends of the deceased and the expense

of such burial does not exceed the amount fixed by the appropriate public welfare official or the local appropriating body for similar burials in similar circumstances, such public welfare official may:

(1) if such relatives or friends were required to pay the expense of such burial in order to arrange the same, wholly or partly reimburse them, from assets transferred or assigned to such social services official by or on behalf of the deceased recipient; but he shall not reimburse a legally responsible relative of the deceased for any part of the amount paid by him which in the judgment of such social services official such relative is able to bear; nor shall such official expend from such assets for such purpose more than is permitted by or pursuant to this section, other provisions of this chapter and regulations of the department.

(2) pay part of the expense of such burial, if, and to the extent and under the circumstances, permitted by his local policy, which shall not be inconsistent with this chapter, and the regulations of the department; but in no case shall such social services official pay more than the balance remaining to be paid after the total of the amounts paid or to be paid by all other sources, including payments made or to be made by such legally responsible relatives of the deceased as are in the judgment of such official able to bear the same, is credited to and deducted from such expense.

(b) In no case shall a public welfare official expend, pursuant to the provisions of this section or any other provision of this chapter, for the burial of a recipient of public assistance or care, from assets transferred or assigned to him by or on behalf of such recipient, an amount which shall be in excess of five hundred dollars.

4. For purposes of this section, the term "recipient of public assistance and care" shall include persons receiving federal supplemental security income benefits pursuant to title sixteen of the federal social security act and/or additional state payments pursuant to title six of article five of this chapter.

5. Expenditures for burial made by social services districts, cities and towns pursuant to the provisions of this chapter shall, if approved by the department, be subject to reimbursement by the state, in

accordance with the regulations of the department to the extent of one hundred per centum thereof in the case of needy Native Americans and members of their families residing on a reservation within the state and fifty per centum in all other cases, and such reimbursement shall be claimed and paid in accordance with the procedure prescribed by and pursuant to section one hundred fifty-three. However, only so much of such an expenditure as does not exceed two hundred fifty dollars for expenditures made prior to October first, nineteen hundred eighty-six, four hundred dollars for expenditures made on and after October first, nineteen hundred eighty-six and prior to April first, nineteen hundred eighty-seven and nine hundred dollars for expenditures made on and after April first, nineteen hundred eighty-seven shall be subject to reimbursement by the state.

6. If an applicant for or a recipient of public assistance or care or of medical assistance under section two hundred nine or three hundred sixty-six of this chapter establishes an irrevocable trust for the payment of his or her funeral expenses, or those of a family member, under section four hundred fifty-three of the general business law, any funds remaining in such trust after the payment of all funeral expenses must be paid over to the social services official responsible for arranging for burials under this section in the local government subdivision where the decedent resided.

§ 142. Exclusiveness of eligibility requirements. No person receiving federal supplemental security income payments and/or additional state payments, or family assistance shall for the same period receive any other of such forms of assistance.

§ 142-a. Federal economic opportunity act grants or payments; effect on eligibility for certain public assistance or care.

Any inconsistent provisions of titles ten and eleven of article five, other provisions of this chapter, or of any other law notwithstanding, in determining the need for public assistance or care under such titles:

1. Any grant made to a family under title III of the federal economic opportunity act of nineteen hundred sixty-four shall not be regarded as income or resources of such family in determining the need of any member thereof for such public assistance or care.

2. The first eighty-five dollars plus one-half of the excess over eighty-five dollars of payments made to or on behalf of any person for or with respect to any month under title I or II of the federal economic opportunity act of nineteen hundred sixty-four or any program assisted under such title shall not be regarded as income or resources of such person in determining his need for such public assistance or care, or as income or resources of any other individual in determining such other individual's need for such public assistance or care; but any amount made available to or for the benefit of such other individual from the excess of the amounts exempted hereby may be considered in determining the eligibility of such other individual for such public assistance or care.

§ 142-b. Federal manpower development training act and elementary and secondary education act grants or payments; effect on eligibility for certain public assistance or care. So long as the applicable provisions of the federal manpower development and training act, as amended, or of the elementary and secondary education act as amended, may require:

1. any inconsistent provision of title ten of article five, other provisions of this chapter, or of any other law notwithstanding, in determining the need for public assistance or care under such title, any payments made under the manpower development and training act, as amended, which are made in lieu of a training allowance to defray expenses attributable to training and/or as a training incentive payment, shall not be regarded as income or resources of the person in determining his need for such public assistance or care, or as income or resources of any other person in determining such other person's need for such public assistance or care; and/or

2. any inconsistent provisions of title ten of article five, other provisions of this chapter, or of any other law notwithstanding, in determining the need for public assistance or care under such title, the first eighty-five dollars per month, during a period of not less than twelve nor more than twenty-four months as may be prescribed by regulations of the department, earned by any person for services rendered to any program assisted under title I of the elementary and secondary education act of nineteen hundred sixty-five, as amended, shall not be regarded as income or resources of such person in determining his need for public assistance or care under such title ten of article five of this chapter, or as income or resources of any other person in determining such other person's need for such public assistance or care.

§ 143. Information to be given by employers of labor to social services officials, the department, family court and the state department of mental hygiene. If requested by an authorized representative of the state department of mental hygiene or of the department or by any social services official, the officials or executives of any corporation or partnership, and all employers of labor of any kind, doing business within the state of New York, shall furnish to such representative or social services official information relating to facts of which such officials, executives or employers shall have cognizance, concerning the last known address, social security number, plans providing care or other medical benefits by insurance or otherwise, wages, salaries, earnings or other income of any applicant for, or recipient of public assistance or care named in such request or of any relative legally responsible for the support of such applicant for, or recipient of public assistance or care, or of any person legally responsible for a person who is receiving services pursuant to section one hundred eleven-g of this chapter, or for the support of any patient of any state institution named by such representative of the state department of mental hygiene.

§ 143-a. Information to be given to public welfare officials by retail

instalment sellers, small loan companies and sales finance companies.

If requested by an authorized representative of the department or by an authority charged with the duty of administering laws relating to public assistance or care in any village, town, city or county, the officials or executives of any corporation or partnership and all persons engaged in selling goods or furnishing services to retail buyers for a time sale price payable in instalments, or in making personal loans whether as a licensed lender under the banking law or otherwise, and any sales finance company as defined in article ten of the banking law, shall furnish to such representatives or authority such information of which such officials, executives or persons shall have cognizance relating to transactions with a recipient of or an applicant for public assistance or care named in such request. Such facts shall include a description of the goods or services sold and the amount of the obligation incurred therefor, the amount of any loan made, the amounts paid and the balance owing, the place of employment, the wages, salaries, earnings or other income, guarantors or co-signers, and all other information furnished by the persons named for the purpose of obtaining credit.

§ 143-b. Avoidance of abuses in connection with rent checks. 1.

Whenever a recipient of public assistance and care is eligible for or entitled to receive aid or assistance in the form of a payment for or toward the rental of any housing accommodations occupied by such recipient or his family, such payment may be made directly by the public welfare department to the landlord.

2. Every public welfare official shall have power to and may withhold the payment of any such rent in any case where he has knowledge that there exists or there is outstanding any violation of law in respect to the building containing the housing accommodations occupied by the person entitled to such assistance which is dangerous, hazardous or detrimental to life or health. A report of each such violation shall be made to the appropriate public welfare department by the appropriate department or agency having jurisdiction over violations.

3. Every public welfare official shall have the power to initiate or

to request the recipient to initiate before the appropriate housing rent commission any proper proceeding for the reduction of maximum rents applicable to any housing accommodation occupied by a person entitled to assistance in the form of a rent payment whenever such official has knowledge that essential services which such person is entitled to receive are not being maintained by the landlord or have been substantially reduced by the landlord.

4. The public welfare department may obtain and maintain current records of violations in buildings where welfare recipients reside which relate to conditions which are dangerous, hazardous or detrimental to life or health.

5. (a) It shall be a valid defense in any action or summary proceeding against a welfare recipient for non-payment of rent to show existing violations in the building wherein such welfare recipient resides which relate to conditions which are dangerous, hazardous or detrimental to life or health as the basis for non-payment.

(b) In any such action or proceeding the plaintiff or landlord shall not be entitled to an order or judgment awarding him possession of the premises or providing for removal of the tenant, or to a money judgment against the tenant, on the basis of non-payment of rent for any period during which there was outstanding any violation of law relating to dangerous or hazardous conditions or conditions detrimental to life or health. For the purposes of this paragraph such violation of law shall be deemed to have been removed and no longer outstanding upon the date when the condition constituting a violation was actually corrected, such date to be determined by the court upon satisfactory proof submitted by the plaintiff or landlord.

(c) The defenses provided herein in relation to an action or proceeding against a welfare recipient for non-payment of rent shall apply only with respect to violations reported to the appropriate public welfare department by the appropriate department or agency having jurisdiction over violations.

6. Nothing in this section shall prevent the public welfare department from making provision for payment of the rent which was withheld

pursuant to this section upon proof satisfactory to it that the condition constituting a violation was actually corrected. Where rents were reduced by order of the appropriate rent commission, the public welfare department may make provision for payment of the reduced rent in conformity with such order.

§ 143-c. Avoidance of abuses in connection with rent security

deposits. 1. Whenever a landlord requires that he be secured against non-payment of rent or for damages as a condition to renting a housing accommodation to a recipient of public assistance, a local social services official may in accordance with the regulations of the department secure the landlord by either of the following means at the option of the local social services official:

(a) By means of an appropriate agreement between the landlord and the social services official, or

(b) By depositing money in an escrow account, not under the control of the landlord or his agent, subject to the terms and conditions of an agreement between the landlord and the social services official in such form as the department may require or approve provided, however, that this option shall not be used in instances where recipients reside in public housing.

2. Except as expressly provided in subdivision three of this section, it shall be against the public policy of the state for a social services official to pay money to a landlord to be held as a security deposit against the non-payment of rent or for damages by a public assistance recipient, or to issue a grant to a recipient of public assistance therefor.

3. When, however, in the judgment of a social services official housing accommodations available in a particular area are insufficient to properly accommodate recipients of public assistance in need of housing, and in order to secure such housing it is essential that he pay money to landlords to be held as security deposits against the non-payment of rent or for damages by public assistance recipients, or to issue grants to recipients of public assistance therefor, such social

services official may pay or furnish funds for such security deposits until sufficient housing accommodations are available in the particular area to properly accommodate recipients of public assistance in need of housing. Social services officials shall not pay or furnish such funds in instances where recipients reside in public housing. Landlords receiving such security deposits shall comply with the provisions of article seven of the general obligations law. Such cash security deposits shall be subject to assignment to the local social services official by the recipients of public assistance or care. Any social services official paying or furnishing funds for security deposits in accordance with the provisions of this subdivision shall make diligent effort to recover such payments or funds from a recipient landlord as allowed by law.

4. This section shall apply to federally-aided categories of public assistance except to the extent prohibited by applicable federal laws and regulations.

5. This section shall apply to recipients of supplemental security income benefits or additional state payments, as defined in section three hundred of this chapter, and such persons shall be deemed recipients of public assistance for the purposes of this section.

§ 144. Power of public welfare officials and service officers to administer oaths; power of public welfare officials to subpoena persons liable for support and compel production of records. Public welfare officials and service officers shall have power to administer oaths and take affidavits in all matters pertaining to their office and to elicit, by examination under oath, statement of facts from applicants for or recipients of assistance or care. Public welfare officials shall have further power to subpoena persons liable by law for the support of applicants for or recipients of assistance or care, compel the attendance of such persons and take their testimony under oath for the purpose of determining the ability of such persons to contribute towards the support of such applicants for or recipients of assistance or care, and in connection therewith to compel the production of books, papers,

records and documents. Such persons shall be entitled to the same mileage fees as are allowed to witnesses required to attend in civil actions in courts of record.

§ 144-a. Information to be given to officials of the department and of social services districts. Any inconsistent provision of law notwithstanding, if requested by an authorized representative of the department or by an official of any town, city or county who is responsible for administering a program authorized by this chapter, the officials of any banking or financial organization or institution doing business in the state whether chartered under state law, federal law, or the laws of another jurisdiction, shall furnish to such governmental officials such information as such officials have as to whether any present applicant for or recipient of any assistance, care or services authorized by this chapter, has or had funds, securities or other property on deposit or in the custody of such banking or financial organization or institution, and the amount or probable value thereof. Such information shall be provided, to the extent practicable, in the format specified by such governmental officials (except that any banking or financial institution may discharge its obligation by supplying such matching information on cartridge, tape or diskette media in the American National Standard Code for Information Interchange file format). These provisions shall be inclusive of and in addition to the provisions of section four of the banking law and may be administered and enforced in any manner consistent with the provisions of this chapter or in any other manner authorized or permitted by the laws and courts of this state.

§ 145. Penalties. 1. Any person who by means of a false statement or representation, or by deliberate concealment of any material fact, or by impersonation or other fraudulent device, obtains or attempts to obtain, or aids or abets any person to obtain public assistance or care to which he is not entitled, or does any wilful act designed to interfere with the proper administration of public assistance and care, shall be guilty of a misdemeanor, unless such act constitutes a violation of a provision

of the penal law of the state of New York, in which case he shall be punished in accordance with the penalties fixed by such law. Failure on the part of a person receiving public assistance or care to notify the social services official granting such assistance or care of the receipt of money or property or income from employment or any other source whatsoever, shall, upon the cashing of a public assistance check by or on behalf of such person after the receipt of such money, or property, or income, constitute presumptive evidence of deliberate concealment of a material fact. Whenever a social services official has reason to believe that any person has violated any provision of this section, he shall promptly refer the facts and evidence available to him to the appropriate district attorney or other prosecuting official, who shall immediately evaluate the facts and evidence and take appropriate action.

2. The provisions of subdivision one of this section shall apply to social services officials and employees, who shall also be subject to removal and shall be liable in an action brought by the county or city, or by the state commissioner of social services, for the value of the public assistance improperly granted to any person as a result of the wilful wrongful act of such official or employee.

§ 145-a. Judgment liens. 1. If any provider of care, services or supplies under the medical assistance program is required to pay any fine, penalty or overpayment to the department, a social services district or any other social services entity as a result of the provisions of this chapter or as a result of any administrative procedure, such provider shall make payment in the amount and the manner directed by the commissioner or his or her agents, representatives or designees.

2. Upon the issuance to the provider of a written notice of a final determination, the department must also notify the provider in writing of the provider's right to request a hearing. The provider's right to request a hearing shall not expire earlier than sixty days from the mailing of such notice of the provider's right to a hearing. If no administrative hearing or proceeding for judicial review shall then be

pending and if the time for initiation of such hearing or proceeding shall have expired, the commissioner or his or her agents, representatives or designees may file with the clerk of the county where the provider resides or has a place of business a certified copy of the final administrative determination of the commissioner or his or her agents, whether in the form of a written final audit report or other final determination that such provider has engaged in unacceptable practices or has received payment to which such provider is not entitled, containing the amount found to be due. The filing of such final administrative determination shall have the full force and effect of a judgment duly docketed in the office of such clerk. The final administrative determination may be enforced by and in the name of the commissioner in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment. Such final administrative determination shall not be filed until at least sixty days after the department has posted by ordinary mail to the provider at the address of such provider on file with the department a copy of the final administrative determination which shall contain notice of the amount found to be due and owing.

§ 145-b. False statements; actions for treble damages. 1. (a) It shall be unlawful for any person, firm or corporation knowingly by means of a false statement or representation, or by deliberate concealment of any material fact, or other fraudulent scheme or device, on behalf of himself or others, to attempt to obtain or to obtain payment from public funds for services or supplies furnished or purportedly furnished pursuant to this chapter.

(b) For purposes of this section, "statement or representation" includes, but is not limited to: a claim for payment made to the state, a political subdivision of the state, or an entity performing services under contract to the state or a political subdivision of the state; an acknowledgment, certification, claim, ratification or report of data which serves as the basis for a claim or a rate of payment, financial information whether in a cost report or otherwise, health care services available or rendered, and the qualifications of a person that is or has rendered health care services.

(c) For purposes of this section, a person, firm or corporation has attempted to obtain or has obtained public funds when any portion of the funds from which payment was attempted or obtained are public funds, or any public funds are used to reimburse or make prospective payment to an entity from which payment was attempted or obtained.

2. For any violation of subdivision one, the local social services district or the state shall have a right to recover civil damages equal to three times the amount by which any figure is falsely overstated or in the case of non-monetary false statements or representations, three times the amount of damages which the state, political subdivision of the state, or entity performing services under contract to the state or political subdivision of the state sustain as a result of the violation or five thousand dollars, whichever is greater. Notwithstanding part C of chapter fifty-eight of the laws of two thousand five: (a) For civil damages collected by a local social services district, relating to the medical assistance program, pursuant to a judgment under this subdivision, such amounts shall be apportioned between the local social services district and the state. If the violation occurred: (i) prior to January first, two thousand six, the amount apportioned to the local social services district shall be the local share percentage in effect immediately prior to such date as certified by the division of budget, or (ii) after January first, two thousand six, the amount apportioned to the local social services district shall be based on a reimbursement schedule, created by the office of Medicaid inspector general, in effect at the time the violation occurred; provided that, if there is no schedule in effect at the time the violation occurred, the schedule to be used shall be the first schedule adopted pursuant to this subdivision. Such schedule shall provide for reimbursement to a local social services district in an amount between ten and fifteen percent of the gross amount collected. Such schedule shall be set on a county by county basis and shall be periodically reviewed and updated as necessary; provided, however, that any such updated schedule shall not be less than ten percent nor greater than fifteen percent of the gross amount collected; and (b) For civil damages collected by the state relating to the medical assistance program pursuant to a judgment under this subdivision, the local social services district shall be entitled

to compensation up to fifteen percent of the gross amount collected for such participation, including but not limited to identification, investigation or development of a case, commensurate with its level of effort or value added as determined by the Medicaid inspector general.

3. If any provider or supplier of services in the program of medical assistance is required to refund or repay all or part of any payment received by said provider or supplier under the provisions of this chapter and title XIX of the federal social security act, said refund or repayment shall bear interest from the date the payment was made to said provider or supplier to the date of said refund or repayment. Interest shall be at the maximum legal rate in effect on the date the payment was made to said provider or supplier.

4. (a) The Medicaid inspector general, in consultation with the department of health, may require the payment of a monetary penalty as restitution to the medical assistance program by any person who fails to comply with the standards of the medical assistance program or standards of generally accepted medical practice in a substantial number of cases or grossly and flagrantly violated such standards and:

(i) receives, or causes to be received by another person, payment from the medical assistance program when such person knew, or had reason to know, that:

(A) the payment involved the providing or ordering of care, services or supplies that were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished;

(B) the care, services or supplies were not provided as claimed;

(C) the person who ordered, prescribed, or furnished the care, services or supplies which were medically improper, unnecessary or in excess of the documented medical need of the person to whom they were furnished was suspended or excluded from the medical assistance program at the time the care, services or supplies were furnished; or

(D) the services or supplies for which payment was received were not, in fact, provided; or

(ii) such person fails to grant timely access to facilities and records, upon reasonable notice, to the Medicaid inspector general, the Medicaid fraud control unit of the attorney general's office, or the

department of health for the purpose of audits, investigations, reviews, or other statutory functions. For purposes of this subparagraph, "reasonable notice" means a written request made by a properly identified agent of the Medicaid inspector general, the Medicaid fraud control unit of the attorney general's office, or the department of health either, during hours that the individual or entity is open for business, or mailed to the individual or entity to an address on file with the department of health or last known address. The request shall include a statement of the authority for the request, the definition of "reasonable notice", and the penalties for failure to comply;

(iii) such person knew or should have known that an overpayment has been identified and does not report, return and explain the overpayment in accordance with subdivision six of section three hundred sixty-three-d of this article;

(iv) such person arranges or contracts, by employment, agreement, or otherwise, with an individual or entity that the person knows or should know is suspended or excluded from the medical assistance program at the time such arrangement or contract regarding activities related to the medical assistance program is made;

(v) such person had an obligation to identify, claim, and pay a bonus under subdivision three of section three hundred sixty-seven-w of this article and such person failed to identify, claim and pay such bonus.

(vi) For purposes of this paragraph, "person" as used in subparagraph (i) of this paragraph does not include recipients of the medical assistance program; and "person" as used in subparagraphs (ii), (iii) and (iv) of this paragraph, is as defined in paragraph (e) of subdivision six of section three hundred sixty-three-d of this article; and "person" as used in subparagraph (v) of this paragraph includes employers as defined in section three hundred sixty-seven-w of this article.

(b) In determining the amount of any monetary penalty to be imposed, the Medicaid inspector general, in consultation with the department of health, shall take into consideration the following:

(i) the number and total value of the claims for payment from the medical assistance program which were the underlying basis of the determination to impose a monetary penalty;

(ii) the effect, if any, on the quality of medical care provided to

recipients of medical assistance as a result of the acts of the person;

(iii) the degree of culpability of the person in committing the proscribed actions and any mitigating circumstances;

(iv) any prior violations committed by the person relating to the medical assistance program, Medicare or other social services programs which resulted in either a criminal or administrative sanction, penalty, or recoupment; and

(v) any other facts relating to the nature and seriousness of the violations including any exculpatory facts.

(c) (i) For subparagraphs (i), (iii), and (iv) of paragraph (a) of this subdivision, in no event shall the monetary penalty imposed exceed ten thousand dollars for each item or service which was the subject of the determination herein, except that where a penalty under this section has been imposed on a person within the previous five years, such penalty shall not exceed thirty thousand dollars for each item or service which was the subject of the determination herein.

(ii) For subparagraph (ii) of paragraph (a) of this subdivision, in no event shall the monetary penalty exceed fifteen thousand dollars for each day of the failure described in such subparagraph.

(iii) For subparagraph (v) of paragraph (a) of this subdivision, a monetary penalty shall be imposed for conduct described in subparagraphs (i), (ii) and (iii) of paragraph (a) of subdivision five of section three hundred sixty-seven-w of this article and shall not exceed one thousand dollars per failure to identify, claim and pay a bonus for each employee.

(d) Amounts collected pursuant to this subdivision shall be apportioned between the local social services district and the state in accordance with the regulations of the department of health.

(e) For the purposes of this subdivision, "gross and flagrant violation" shall mean conduct which has an adverse effect on the fiscal integrity of the medical assistance program and:

(i) which substantially impairs the delivery of high quality medical care, services, or supplies; or

(ii) which substantially impairs the oversight and administration of the program.

(f) A person against whom a monetary penalty is imposed pursuant to this subdivision shall be entitled to notice and an opportunity to be

heard, including the right to request a hearing pursuant to section twenty-two of this chapter.

5. When in the course of conducting an investigation relating to the investigation relating to the medical assistance program, a local social services district deduces that a provider may have committed criminal fraud, it shall refer the case to the office of Medicaid inspector general along with appropriate supporting information. The office shall promptly review the case and, if deemed appropriate, refer the case pursuant to subdivision seven of section thirty-two of the public health law. If the deputy attorney general for Medicaid fraud control accepts a referral from the office of Medicaid inspector general that was identified, investigated or developed by a local social services district, and the state collects damages, the participating local social services district shall be entitled to compensation up to fifteen percent of the gross amount collected for such participation commensurate with its level of effort or value added as determined by the deputy attorney general for Medicaid fraud control. If the office of Medicaid inspector general determines that it is not appropriate for referral in accordance with subdivision seven of section thirty-two of the public health law the office of Medicaid inspector general shall further investigate the case, with notice to the participating local social services district, or return the case to the participating social services district, which may resume its investigation of the provider.

§ 145-c. Sanctions. Any person who, individually or as a member of a family, applies for or receives public assistance and is found by a federal, state or local criminal, civil or other court or pursuant to an administrative hearing held in accordance with the regulations of the department, on the basis of a plea of guilty or nolo contendere or otherwise, intentionally to have (a) made a false or misleading statement or misrepresented, concealed, or withheld facts, or (b) committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity, for the purpose of establishing or maintaining the eligibility of the individual or of the individual's family for aid or of increasing (or preventing a reduction in) the

amount of such aid, then the needs of such individual shall not be taken into account in determining his or her need or that of his or her family pursuant to section one hundred thirty-one-a of this article (i) for a period of six months upon the first occasion of any such offense, (ii) for a period of twelve months upon the second occasion of any such offense or upon an offense which resulted in the wrongful receipt of benefits in an amount of between at least one thousand dollars and no more than three thousand nine hundred dollars, (iii) for a period of eighteen months upon the third occasion of any such offense or upon an offense which results in the wrongful receipt of benefits in an amount in excess of three thousand nine hundred dollars, and (iv) five years for any subsequent occasion of any such offense. Any period for which sanctions are imposed shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the sanctions were imposed is subsequently reversed by a court of appropriate jurisdiction; but in no event shall the duration of the period for which such sanctions are imposed be subject to review. The sanctions shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved, except that the social services official or court official assessing penalties against a recipient for an act of fraud or misrepresentation described in this subdivision may consider whether to impose such penalties based upon the existence of the penalties described herein.

§ 146. Penalty for the sale or exchange of assistance supplies. 1.

Any person who shall sell or exchange supplies or articles furnished him as assistance or care by any public welfare official or employee of the public welfare district, or dispose of them in any other way than as directed, shall be guilty of a misdemeanor.

2. Any person who purchases any article knowing it to have been furnished to any person as assistance or care shall also be guilty of a misdemeanor.

§ 147. Misuse of food stamps, food stamp program coupons, authorization cards and electronic access devices. 1. a. Whoever knowingly uses, transfers, acquires, alters, purchases, transports or possesses food stamps, food stamp program coupons, authorization cards or electronic access devices which entitle a person to obtain food stamps, in any manner not authorized by section ninety-five of this chapter shall be guilty of a class A misdemeanor except that if the value of the benefit he or she obtained:

(i) exceeds one thousand dollars, he or she shall be guilty of a class E felony; or

(ii) exceeds three thousand dollars, he or she shall be guilty of a class D felony; or

(iii) exceeds fifty thousand dollars, he or she shall be guilty of a class C felony.

b. For the purposes of this section, the value of the benefit obtained shall be the cumulative face value of such food stamps, food stamp program coupons, authorization cards or electronic access devices.

2. Any person found to have violated the provisions of subparagraph (i), (ii) or (iii) of paragraph a of subdivision one of this section, who shall possess a license to sell liquor under section sixty-three of the alcoholic beverage control law or to sell lottery tickets under article thirty-four of the tax law, shall have such license or licenses revoked in addition to any other penalty authorized by law. As used herein, the word "person" shall mean any individual, partnership, corporation, or association.

§ 148. Penalty for unlawfully bringing a needy person into a public welfare district. No person shall, without legal authority, send or bring, or cause to be sent or brought, any needy person into a public welfare district with the purpose of making him a charge on such public welfare district, or for the purpose of avoiding the responsibility of assistance or care in the public welfare district from which he is brought or sent. Any person found guilty of such an act shall be guilty of a misdemeanor and liable to a fine of fifty dollars, recoverable in

the name of the public welfare district.

§ 149. Penalty for bringing a needy person into the state. 1. Any person who knowingly brings, or causes to be brought, a needy person from out of the state into this state for the purpose of making him a public charge, shall be guilty of a misdemeanor punishable by a fine of one hundred dollars, and shall be obligated to convey such person out of the state or to support him at his own expense.

2. The commissioner of public welfare of the district to which such needy person is brought may bring a suit in a court of competent jurisdiction to enforce this obligation.

3. The court shall require satisfactory security from such person that he will convey the needy person out of the state within the time fixed by the court or will indemnify the public welfare district for all charges and expenses incurred for the assistance and care or transportation of such needy person. If such person refuses to give security when so required the court may commit him to jail for not exceeding three months.

§ 150. Penalty for neglect to report or for making false report. 1. Any commissioner of public welfare, deputy commissioner, town or city public welfare officer, service officer, or any officer or employee who shall neglect or refuse to render any account, statement or report required by or pursuant to this chapter, or who shall delay, neglect or refuse to forward any application for public assistance or care, or shall wilfully make false report or shall neglect to pay over any money within the time required by law, shall forfeit two hundred dollars and shall be liable to an action for all money which shall be in his hands with the interest thereon after the time the same should have been paid over.

2. Any officer, department or board, in case of failure to receive an application for public assistance and care, or a report or account

required by this chapter, shall notify the district attorney having authority in such public welfare district.

3. The district attorney, upon receiving such notice, shall prosecute in the name of such officer, department or board for the recovery of the penalty or of such money, or both. The penalty and the sum recovered shall be deposited in the public welfare fund of the public welfare district or of a town or city thereof, as the case may be.

§ 151. Penalties for cashing public assistance checks or accepting electronic benefit transfers from public assistance recipients. 1.

Unauthorized transactions. Except as otherwise provided in subdivision two of this section, no person, firm, establishment, entity, or corporation (a) licensed under the provisions of the alcoholic beverage control law to sell liquor and/or wine at retail for off-premises consumption; (b) licensed to sell beer at wholesale and also authorized to sell beer at retail for off-premises consumption; (c) licensed or authorized to conduct pari-mutuel wagering activity under the racing, pari-mutuel wagering and breeding law; (d) licensed to participate in charitable gaming under article fourteen-H of the general municipal law; (e) licensed to participate in the operation of a video lottery facility under section one thousand six hundred seventeen-a of the tax law; (f) licensed to operate a gaming facility under section one thousand three hundred eleven of the racing, pari-mutuel wagering and breeding law; or (g) providing adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, or making available the venue in which performers disrobe or perform in an unclothed state for entertainment, shall cash or accept any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof, as and for public assistance.

2. Authorized transactions. (a) A grocery store that sells groceries including staple foods and that also offers, or is located within the same building or complex as, a casino, gambling casino, or gaming establishment; and any area of a pari-mutuel race track that does not accept wagers and is not open to the public or to unauthorized

personnel, such as non-wagering areas of the backstretch, may accept any public assistance check or electronic benefit transfer issued by a public welfare official or department, or agent thereof. For purposes of this paragraph, "gaming establishment" shall mean any video lottery facility, off-track betting branch office, simulcast facility, licensed commercial charitable gaming facility, or any pari-mutuel race track.

(b) Any establishment that offers gambling incidental to the principal purpose of the business at such location may accept any public assistance check or electronic benefit transfer device issued by a public welfare official or department, or agent thereof.

3. Penalties. (a) A violation of the provisions of subdivision one of this section taking place at the licensed premises by a person, corporation or entity licensed under the alcoholic beverage control law: (i) to sell liquor and/or wine at retail for off-premises consumption; (ii) to sell beer at wholesale and also authorized to sell beer at retail for off-premises consumption; or (iii) to sell liquor, wine and/or beer for on-premises consumption at an establishment where entertainers appear unclothed as permitted by the rules of the state liquor authority, shall constitute cause, for the purposes of section one hundred eighteen of the alcoholic beverage control law, for the revocation, cancellation or suspension of such license.

(b) A violation of the provisions of subdivision one of this section by any person, corporation or entity licensed to operate a gaming facility under section one thousand three hundred eleven of the racing, pari-mutuel wagering and breeding law; licensed under section one thousand six hundred seventeen-a of the tax law to participate in the operation of a video lottery facility; licensed or authorized to conduct pari-mutuel wagering under the racing, pari-mutuel wagering and breeding law; or licensed to participate in charitable gaming under article fourteen-H of the general municipal law, shall subject such person, corporation or entity to disciplinary action pursuant to section one hundred four of the racing, pari-mutuel wagering and breeding law and section one thousand six hundred seven of the tax law, which may include revocation, cancellation or suspension of such license or authorization.

(c) A violation of the provisions of subdivision one of this section by any person, firm, establishment, entity or corporation providing

adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, or making available the venue in which performers disrobe or perform in an unclothed state for entertainment, shall be a violation, as defined in subdivision three of section 10.00 of the penal law, subject to a fine of not more than one hundred dollars, a second such violation shall be a violation subject to a fine of not more than five hundred dollars, and a third or subsequent such violation shall be class B misdemeanor subject to a fine of not more than one thousand dollars.

§ 152. Payments to the New York public welfare association; attendance at conventions of public welfare officials. The legislative body of a county or city is hereby authorized to include annually in the appropriation made for public assistance and care and to raise by taxation the sum necessary to meet the actual and necessary expenses of maintaining and continuing the New York public welfare association for the purpose of devising practical ways and means for obtaining greater economy and efficiency in the administration of public assistance and care, and for the expenses incurred by public welfare officials and employees in attending meetings of public welfare officials. Superintendents and matrons of public homes, county and city public welfare officials and deputies and agents designated by the public welfare officials are authorized to attend the midwinter and annual conventions of public welfare officials. The necessary expenses in connection with such attendance shall be paid from public welfare funds.

§ 152-a. Burial reserves for certain recipients of public assistance or care from assigned assets. When other provisions of this chapter providing for reserving an amount for the burial of a recipient of public assistance or care, from assets transferred or assigned to a social services official, do not apply to a recipient because of the category of public assistance or care received by him or her, as in the case of a recipient of safety net assistance, a similar burial reserve from assigned assets may or shall, as the regulations of the department may permit or require, be set aside for such recipient; and any such

burial reserve heretofore set aside with the approval of the department, or in accordance with its requirements, shall be deemed to have been authorized.

§ 152-b. Surplus after recovery of cost of public assistance and care; unclaimed funds. If, after the full amount expended by a public welfare district for the assistance and care of a deceased or other former recipient of public assistance and care, including the federal and state shares thereof, as determined in accordance with regulations of the department, and any authorized amount expended for the burial of such deceased recipient, shall have been recovered and deducted from the net proceeds of assets which have been transferred or assigned to the public welfare official by or on behalf of such recipient to insure repayment of the cost of his assistance and care, any balance or surplus remains, it shall be credited forthwith by the public welfare district to the estate or persons entitled thereto; but if unclaimed within four years thereafter by those entitled thereto it shall be deemed abandoned property and be paid to the state comptroller pursuant to section thirteen hundred five of the abandoned property law.

§ 152-c. Menstrual products. Any provider of temporary shelter that is reimbursed from state or state-administered grants or funds shall be required to provide an adequate number of menstrual products commensurate with an individual's needs, including, but not limited to, sanitary napkins, tampons and panty liners, at no cost to individuals requiring such products. For purposes of this section, "temporary shelter" shall include but not be limited to a family shelter, a shelter for adults, a hotel, an emergency apartment, a domestic violence shelter, a runaway and homeless youth shelter, or a safe house for refugees.

§ 152-d. Replacement of stolen public assistance. 1. Notwithstanding section three hundred fifty-j of this article and subdivision eleven of section one hundred thirty-one of this title, and in accordance with

this section, public assistance recipients shall receive replacement assistance for the loss of public assistance, as defined in subdivision nineteen of section two of this chapter, in instances when such public assistance has been stolen as a result of card skimming, cloning, third party misrepresentation or other similar fraudulent activities, consistent with guidance issued by the office of temporary and disability assistance.

2. The office of temporary and disability assistance shall establish a protocol for recipients to report incidents of stolen public assistance. This protocol will be administered by social services districts pursuant to guidance issued by the office of temporary and disability assistance.

3. Social services districts shall promptly replace stolen public assistance, however, such replacement shall occur no later than five business days after the social services district has verified the public assistance was stolen in accordance with guidance established by the office of temporary and disability assistance consistent with federal and state laws, regulations and guidance, provided, however, that social services districts shall not ask recipients to obtain a police report or require any other interaction with law enforcement unless required by federal law, regulation, or guidance for either public assistance or supplemental nutrition assistance program benefits.

4. For public assistance that is verified as stolen, replacement assistance shall be provided by the social services district in accordance with this section as follows:

(a) the lesser of: (i) the amount of public assistance that was stolen; or (ii) the amount of public assistance equal to two months of the monthly allotment of the household immediately prior to the date upon which the public assistance was stolen; provided, however, the commissioner may promulgate regulations for the provision of additional replacement assistance in extenuating circumstances consistent with federal and state laws, regulations and guidance; and

(b)(i) no more than twice in a federal fiscal year to cover public assistance stolen on or after January first, two thousand twenty-two through September thirtieth, two thousand twenty-four; or (ii) no more

than once in a federal fiscal year to cover public assistance stolen on or after October first, two thousand twenty-four.

5. Any replacement assistance provided under this section shall be exempt from recoupment and recovery provisions under title six of article three of this chapter; provided, however, that assistance shall not be exempt from recoupment and recovery if it is later determined that the public assistance that was replaced pursuant to this section was not stolen as a result of card skimming, cloning, third party misrepresentation or other similar fraudulent activities.

6. The office of temporary and disability assistance shall make a model sign available on its website that can be used by any person, firm, partnership, association or corporation required to inform individuals about electronic benefit transfer scams, including, but not limited to, skimming, and the steps they can take to protect their benefits in accordance with section three hundred ninety-e of the general business law.

TITLE 2

STATE REIMBURSEMENT FOR PUBLIC ASSISTANCE AND CARE

- Section 153. Reimbursement and advances by the state.
- 153-a. Reimbursement for services to social services districts.
 - 153-b. Reimbursement for services.
 - 153-f. State reimbursement of home energy grant expenses.
 - 153-k. Funding for children and family services.

§ 153. Reimbursement and advances by the state. 1. * Expenditures made by social services districts, cities and towns for public assistance and care and its administration, other than foster care services, pursuant to this chapter and expenditures made by any Indian tribe for foster care services, preventive services, and adoption services and its administration rendered pursuant to an agreement entered into with the office of children and family services in accordance with section

thirty-nine of this chapter and pursuant to this chapter, shall, if approved by the department of family assistance, be subject to reimbursement by the state, in accordance with the regulations of the department, as follows:

* NB Effective until June 30, 2027

* Expenditures made by social services districts, cities and towns for public assistance and care and its administration, pursuant to this chapter and expenditures made by any Indian tribe for foster care services, preventive services, and adoption services and its administration rendered pursuant to an agreement entered into with the department in accordance with section thirty-nine of this chapter and pursuant to this chapter, shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department, as follows:

* NB Effective June 30, 2027

There shall be paid to each such district, city or town

a. the amount of federal funds, if any, properly received or to be received on account of such expenditures;

d. fifty percentum of the amount expended for public assistance and care, after first deducting therefrom any federal funds properly received or to be received on account thereof;

e. fifty percentum of the amount expended for administration of public assistance and care, after first deducting therefrom any federal funds properly received or to be received on account thereof. The provisions of this paragraph shall not be applicable to expenditures for administration expressly provided for in paragraph f of this subdivision;

f. the full amount expended by any district, city, town or Indian tribe for the costs, including the costs of administration of public assistance and care to eligible needy Indians and members of their families residing on any Indian reservation in this state, after first deducting therefrom any federal funds properly received or to be

received on account thereof.

(g) fifty per centum of the amount expended for substance abuse services pursuant to this chapter, after first deducting therefrom any federal funds properly received or to be received on account thereof. In the event funds appropriated for such services are insufficient to provide full reimbursement of the total of the amounts claimed by all social services districts pursuant to this section then reimbursement shall be in such proportion as each claim bears to such total.

2. (a) In the event that the federal government imposes fiscal sanctions on the state because of non-compliance with federal law, regulation, or policy relating to the temporary assistance for needy families block grant, other than sanctions relating to maintenance of effort spending requirements, the commissioner shall reduce federal reimbursement to each social services district in an amount equal to the portion of such fiscal sanction that the commissioner determines is attributable to such district through review of relevant statewide and district specific data or documentation. The commissioner shall make such determination of district fault only to the extent that his or her review identifies specific district actions or inactions that resulted in the district's failure to meet the applicable federal requirement. Such reduction in federal reimbursement shall be made without state financial participation in resulting costs. To the extent that the commissioner determines that he or she is unable to identify which districts caused or contributed to such federal fiscal sanction, the commissioner, subject to the approval of the director of the budget, shall assign the reduction in federal reimbursement to all districts proportionately based on allowable district expenditures under Title IV-A of the federal social security act in the most recently completed state fiscal year, and the state shall share equally with social services districts in the cost increases resulting from such reduction in federal reimbursement.

(b) In the event that the federal government imposes fiscal sanctions on the state because of non-compliance with federal law, regulation, or policy relating to maintenance of effort spending requirements under the federal temporary assistance to needy families block grant, the commissioner shall reduce federal reimbursement to each social services

district in an amount equal to the portion of such fiscal sanction that the commissioner determines is attributable to such district through review of relevant statewide and district specific data or documentation. Cost increases resulting from such reduction in federal reimbursement shall be shared equally by the state and each affected social services district. To the extent that the commissioner determines that he or she is unable to identify which districts caused or contributed to such federal fiscal sanction, the commissioner, subject to the approval of the director of the budget, shall assign the reduction in federal reimbursement among all districts proportionately based on each district's portion of the statewide maintenance of effort spending requirement as determined by the commissioner, and the state shall share equally with social services districts in the cost increases resulting from such reduction in federal reimbursement.

(c) Notwithstanding any inconsistent provision of law, if a portion of federal reimbursement otherwise payable is not available because of application of the federal percentage limitation on administrative expenses in the federal block grant for temporary assistance for needy families program, the commissioner shall rank all social services districts in descending order based on the percentage that federally reimbursed administrative expenses in each district in the federal fiscal year bears to all total expenditures eligible for federal reimbursement under title IV-A of the federal social security act in the respective district and shall reduce reimbursement payable to the district that received the highest proportion of such federal reimbursement until such reduction equals the lesser of the shortfall in federal reimbursement or the amount which, if applied to federal administrative reimbursement received in the federal fiscal year, would equalize the proportion of such reimbursement received by such district and that received by the next highest district or districts in the commissioner's ranking. In the event that sufficient savings are not achieved by such reduction in reimbursement to the highest ranked district, then the commissioner shall continue to reduce the amount of reimbursement for the highest and, as necessary, the sequentially ranked district or districts such that such reductions, when applied in the federal fiscal year, will equalize the proportion of federal reimbursement for administration received by all such affected districts

and will equal an amount which, in aggregate, will be sufficient to fully offset but not exceed the federal reimbursement shortfall. Notwithstanding any provision of law to the contrary, reimbursement to a social services district out of state and federal funds shall not be made on administrative expenses which exceed fifteen percent of such district's total expenditures reimbursable under the temporary assistance for needy families block grant.

3. a. For the purpose of this title, expenditures for administration of public assistance and care shall include expenditures for salaries of the chief executive officers, their deputies and the employees of local welfare departments; operation, maintenance and service costs; and such other expenditures, such as equipment costs, depreciation charges, and rental values as may be approved by the department. It shall not include expenditures for capital additions or improvements, except as provided in paragraph c of this subdivision.

b. State reimbursement shall not be made for any part of the salary of a chief executive officer of a social services department, whose qualifications do not conform to those fixed by the department or of a city or town service officer; nor shall such reimbursement be made on the salary of a deputy commissioner or an employee, unless his employment is necessary for the administration of public assistance and care and his qualifications conform to those fixed by the department.

c. Notwithstanding any inconsistent provision of law, the amount expended by a social services district for the purpose of acquiring, reconstructing, rehabilitating or improving any shelter for adults shall be subject to state reimbursement in the amount of fifty percent of such expenditure, in accordance with the regulations of the department, if such shelter is operated by: (i) a social services district directly or (ii) a social services district which has entered into a contract with a not-for-profit corporation or charitable organization otherwise established pursuant to law or a governmental entity or political subdivision thereof for the purpose of operating such a shelter; provided, however, that such capital acquisition, reconstruction, rehabilitation or improvement has the approval of the department prior

to the commencement of such construction in accordance with regulations promulgated by the department.

Such reimbursement may be paid out of any moneys in the state treasury payable out of the local assistance account to the extent of the amount appropriated to the department for such purposes, and the expenditure of such amount shall constitute the complete liquidation of the state's obligation to reimburse pursuant to this section.

4. For the purpose of this title, expenditures made by social services districts, cities, towns and any Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter for the care and maintenance of neglected, abused, abandoned or destitute children who have been remanded, discharged or committed pursuant to the family court act of the state of New York shall, if approved by the department, be subject to reimbursement by the state in accordance with and to the extent authorized by the provisions of subdivision one.

5. In the event the state elects to claim and receive federal aid payments in accordance with the alternative formula authorized by the provisions of section eleven hundred eighteen of the social security act, for expenditures made under the state's approved plan for aid to dependent children, a social services district shall, notwithstanding such election, be entitled to receive as state reimbursement, in accordance with and to the extent authorized by subdivision one, for its approved monthly expenditures for aid to dependent children, the amount it would have been entitled to receive if such election had not been made, until the month the amount it would be entitled to receive as state reimbursement for its approved expenditures for such program of assistance for such month, as a result of such election, is equal to or greater than such district would have been entitled to receive therefor if such election had not been made by the state, any inconsistent provision of law notwithstanding.

6. a. Claims for state reimbursement shall be made in such form and manner and at such times and for such periods as the department shall

determine.

b. When certified by the department state reimbursement shall be paid from the state treasury upon the audit and warrant of the comptroller out of funds made available therefor.

c. When the monies allotted to the state by the federal security agency, or other authorized federal agency, for aid to dependent children for any quarter shall have been received by the department of taxation and finance, the department shall, as soon as possible, certify to the comptroller the amount to which each social services district is entitled for such quarter and such amount shall be paid out of the state treasury after audit by the comptroller to the respective social services districts.

d. The department is authorized in its discretion to make advances to public welfare districts and to cities and towns in anticipation of the state reimbursement provided for in this section.

7. Payment of state reimbursement and advances shall be made to the fiscal officer of the public welfare district or city entitled thereto pursuant to the provisions of this chapter; and in counties where home relief is a town charge, such payment as the towns therein shall be entitled to shall be made to the fiscal officer of the county for the account of and reimbursement to such towns, except in the case of a town which is a public welfare district.

8. Any inconsistent provision of the law or regulation of the department notwithstanding, state reimbursement shall not be made for any expenditure made for the duplication of any grant and allowance for any period, except as authorized by subdivision eleven of section one hundred thirty-one of this chapter. Notwithstanding any other provision of law, social services districts are not required to provide safety net assistance to any person, otherwise eligible, if state reimbursement is not available in accordance with this subdivision.

9. Any inconsistent provision of this chapter or other law

notwithstanding, any loss of federal funds assessed by the department of health, education and welfare against the state by reason of the failure of one or more social services districts to comply either with paragraph (e) of subdivision one of section three hundred fifty and paragraph (c) of subdivision four of section three hundred sixty-five-a relating to family planning services for eligible individuals or with paragraph (g) of subdivision one of section three hundred fifty relating to child health screening and resulting treatment, shall be charged to and borne by the social services districts responsible for such loss. Each such district shall bear only so much of any such loss as is attributable to its failure so to comply. The amount to be borne by a district shall be determined by applying the ratio that the number of cases in which it failed to comply with either family planning or child health screening and treatment requirements, or both, bears to the total number of cases in the state in which there were failures to comply with either such requirement, or both, as the case may be. A district shall have an opportunity to be heard before the department's final determination to impose such an assessment.

* 10. Expenditures made by a social services district for the maintenance of children with disabilities, placed by school districts, pursuant to section forty-four hundred five of the education law shall, if approved by the office of children and family services, be subject to fifty-six and eight hundred forty-eight thousandths percent reimbursement by the school district, in accordance with paragraph c of subdivision one of section forty-four hundred five of the education law, after first deducting therefrom any federal funds received or to be received on account of such expenditures, except that in the case of a student attending a state-operated school for the deaf or blind pursuant to article eighty-seven or eighty-eight of the education law who was not placed in such school by a school district such expenditures shall be subject to fifty percent reimbursement by the school district after first deducting therefrom any federal funds received or to be received on account of such expenditures. Such expenditures shall not be subject to the limitations on state reimbursement contained in subdivision two of section one hundred fifty-three-k of this title. In the event of the failure of the school district to make the maintenance payment pursuant to the provisions of this subdivision, the state comptroller shall

withhold state reimbursement to any such school district in an amount equal to the unpaid obligation for maintenance and pay over such sum to the social services district upon certification of the commissioner of the office of children and family services and the commissioner of education that such funds are overdue and owed by such school district. The commissioner of the office of children and family services, in consultation with the commissioner of education, shall promulgate regulations to implement the provisions of this subdivision.

* NB Effective until April 1, 2027

* 10. Expenditures made by a social services district for the maintenance of children with disabilities, placed by school districts, pursuant to section forty-four hundred five of the education law shall, if approved by the office of children and family services, be subject to eighteen and four hundred twenty-four thousandths percent reimbursement by the state and thirty-eight and four hundred twenty-four thousandths percent reimbursement by school districts, except for social services districts located within a city with a population of one million or more, where such expenditures shall be subject to fifty-six and eight hundred forty-eight thousandths percent reimbursement by the school district, in accordance with paragraph c of subdivision one of section forty-four hundred five of the education law, after first deducting therefrom any federal funds received or to be received on account of such expenditures, except that in the case of a student attending a state-operated school for the deaf or blind pursuant to article eighty-seven or eighty-eight of the education law who was not placed in such school by a school district such expenditures shall be subject to fifty percent reimbursement by the state after first deducting therefrom any federal funds received or to be received on account of such expenditures and there shall be no reimbursement by school districts. Such expenditures shall not be subject to the limitations on state reimbursement contained in subdivision two of section one hundred fifty-three-k of this title. In the event of the failure of the school district to make the maintenance payment pursuant to the provisions of this subdivision, the state comptroller shall withhold state reimbursement to any such school district in an amount equal to the unpaid obligation for maintenance and pay over such sum to the social services district upon certification of the commissioner of the office

of children and family services and the commissioner of education that such funds are overdue and owed by such school district. The commissioner of the office of children and family services, in consultation with the commissioner of education, shall promulgate regulations to implement the provisions of this subdivision.

* NB Effective April 1, 2027 until June 30, 2027

* 10. Expenditures made by a social services district for the maintenance of handicapped children, placed by school districts, pursuant to section forty-four hundred five of the education law shall, if approved by the department, be subject to fifty percent reimbursement by the state, after first deducting therefrom any federal funds received or to be received on account of such expenditure. Such expenditures shall not be subject to the limitations on state reimbursement contained in sections one hundred fifty-three-d or one hundred fifty-three-e of this chapter.

* NB Effective June 30, 2027

* 11. Expenditures made by a social services district for approved tuition costs pursuant to section four thousand four of the education law, after first deducting therefrom any federal funds received or to be received on account thereof, for a child placed in a child care institution by a social services district, the office of children and family services or family court shall be subject to reimbursement by the state in accordance with subdivision two of section one hundred fifty-three-k of this title and article nineteen-G of the executive law, as applicable; provided, however, that the amount that a school district reimburses the state for its expenditure for such children pursuant to section four thousand four of the education law shall be credited to each applicable social services district.

* NB Effective until June 30, 2027

* 11. Expenditures made by a social services district for approved tuition costs of certain children pursuant to section four thousand four of the education law, after first deducting therefrom any federal funds received or to be received on account thereof, shall be subject to fifty percent reimbursement by the state; provided, however, that the amount that a school district reimburses the state for its expenditure for such children pursuant to section four thousand four of the education law shall be credited to each applicable social services district.

* NB Effective June 30, 2027

* 12. Expenditures made by a social services district for the detention in foster care facilities or certified or approved family boarding homes of a person alleged to be or adjudicated as a person in need of supervision, pursuant to article seven of the family court act, shall be subject to reimbursement by the state in accordance with the provisions of section five hundred thirty of the executive law. The care of such person shall not be required to comply with the requirements of sections four hundred nine-e and four hundred nine-f of this chapter.

* NB Effective until June 30, 2027

* 12. Expenditures made by a social services district for the detention in foster care facilities of a person alleged to be or adjudicated as a person in need of supervision, pursuant to article seven of the family court act, shall be subject to reimbursement by the state in accordance with the provisions of section five hundred thirty of the executive law. The care of such person shall not be required to comply with the requirements of sections four hundred nine-e and four hundred nine-f, nor be subject to the provisions of section one hundred fifty-three-d or three hundred ninety-eight-b of this chapter.

* NB Effective June 30, 2027

15. Notwithstanding the provisions of this section or any other law to the contrary, expenditures made by a social services district for brokers' fees, finders' fees or security deposits paid pursuant to this chapter shall be subject to twenty-five percent reimbursement, after first deducting therefrom any federal funds received or to be received on account thereof.

16. Notwithstanding any inconsistent provisions of this section, and subject to the amounts specifically appropriated therefor, social services districts which have implemented child assistance program pursuant to section one hundred thirty-one-z of this article shall be reimbursed by the department for administrative expenses for the implementation and operation of the program as approved by the department in accordance with the following schedule after first deducting any federal reimbursement received therefor: for the fiscal year beginning April first, nineteen hundred ninety-seven, one hundred

percent; for the fiscal year beginning April first, nineteen hundred ninety-eight, ninety percent; for the fiscal year beginning April first, nineteen hundred ninety-nine, eighty percent; for the fiscal year beginning April first, two thousand, seventy percent; for the fiscal year beginning April first, two thousand one, sixty percent and for each fiscal year thereafter, fifty percent.

17. From an amount specifically appropriated therefor, the commissioner of the office of temporary and disability assistance shall provide additional enhanced reimbursement for administration of income maintenance, food stamps, and employment programs to social services districts which meet the work participation rates set forth in subdivision seven of section three hundred thirty-five-b of this chapter. The amount of reimbursement available to each social services district shall be established by the commissioner of the office of temporary and disability assistance with the approval of the director of the budget. Separate amounts of reimbursement shall be available to a social services district for meeting each of the following categories: for households receiving assistance funded under the federal temporary assistance for needy families block grant program in which there is an adult or minor head of household; and for households with dependent children in which there is an adult or minor head of household and which is receiving safety net assistance and payment for which is used to meet the federally required maintenance of effort for the temporary assistance for needy families block grant. The office of temporary and disability assistance may advance reimbursement that would be available for full compliance and may recover any amounts unearned by the district by withholding any other reimbursement due from the state to the social services district.

§ 153-a. Reimbursement for services to social services districts. 1. Expenditures made by a department, bureau, division or other unit of a county or city for services to, on behalf of, or directly related to the operations of a social services district, pursuant to the provisions of this chapter or any other provision of law, may, if approved by the department, be subject to reimbursement by the state, if and so long as

such expenditures are subject to federal reimbursement and only to the extent of such federal reimbursement. There may be paid to each such social services district the amount of federal funds, if any, properly received or to be received on account of such expenditures. This section shall not apply to reimbursement for expenditures related to the location of absent parents, establishment of paternity or enforcement of support reimburseable under title six-A of article three of this chapter.

2. a. Claims for such reimbursement from federal funds shall be made in such form and manner and at such times and for such periods as the department shall determine, including claims for any such expenditures made on or after January 1, 1970.

b. When certified by the department, such reimbursement from federal funds shall be paid from the state treasury upon the audit and warrant of the comptroller out of funds made available therefor.

c. When the monies allotted to the state by the federal security agency, or other authorized federal agency, for such services to social services districts for any quarter or other authorized period shall have been received by the department of taxation and finance, the department shall, as soon as possible, certify to the comptroller the amount to which each social services district is entitled for such quarter or other authorized period and such amount shall be paid out of the state treasury after audit by the comptroller to the respective social services district.

3. Payment of such reimbursement from federal funds shall be made to the fiscal officer of the social services district entitled thereto pursuant to the provisions of this chapter or any other provision of law.

§ 153-b. Reimbursement for services. Expenditures made by a social services district for the purposes of this chapter as authorized by section one hundred thirty-one-g of this chapter shall, if approved by

the department, be subject to reimbursement by the state not pursuant to section one hundred fifty-three or any other provision of this chapter, but, in accordance with the regulations of the department to the extent of any and only in the amount of federal funds, if any properly received or to be received on account of such expenditures.

§ 153-f. State reimbursement of home energy grant expenses.

Notwithstanding any other provision of law, expenditures made by social services districts in the form of payments made as home energy grants pursuant to the provisions of subdivision three-c of section one hundred thirty-one-a of this article shall be reimbursed as follows:

There shall be paid to each such city, district or town;

1. The amount of federal funds properly received or to be received on account of such expenditures; and

2. One hundred percent of the amount expended after first deducting therefrom any federal funds properly received or to be received on account thereof.

*** § 153-k. Funding for children and family services. 1. (a)**

Expenditures made by social services districts for child protective services, preventive services provided, as applicable, to eligible children and families of children who are in and out of foster care placement, independent living services, aftercare services, and adoption administration and services other than adoption subsidies provided pursuant to article six of this chapter and the regulations of the department of family assistance shall, if approved by the office of children and family services, be subject to sixty-five percent state reimbursement exclusive of any federal funds made available for such purposes, in accordance with the directives of the department of family assistance and subject to the approval of the director of the budget.

(b) Claims for preventive services and independent living services submitted by a social services district for reimbursement may be

comprised of in-kind, indirect services, and non-tax levy funds, including but not limited to privately donated funds, up to the same amount as the social services district's claims for such services during federal fiscal year nineteen hundred ninety-eight--ninety-nine were comprised of in-kind, indirect services and non-tax levy funds; provided, however, that up to seventeen and one-half percent of a social services district's claims for preventive services and independent living services may be comprised of privately donated funds if the percentage of its claims comprised of privately donated funds was less than seventeen and one-half percent during federal fiscal year nineteen hundred ninety-eight--nineteen hundred ninety-nine. Federal reimbursement of such claims shall be available only to the extent permitted by federal law or regulations.

2. (a) Notwithstanding the provisions of this chapter or of any other law to the contrary, eligible expenditures by a social services district for foster care services shall be subject to reimbursement with state funds only to the extent of annual appropriations to the state foster care block grant. Such foster care services shall include expenditures for the provision and administration of: care, maintenance, supervision, tuition, and transportation costs related to the education of a foster child or youth incurred in accordance with paragraph c of subdivision four of section thirty-two hundred forty-four of the education law; supervision of foster children placed in federally funded job corps programs; and care, maintenance, supervision and tuition for adjudicated juvenile delinquents and persons in need of supervision placed in residential programs operated by authorized agencies and in out-of-state residential programs; except that, notwithstanding any other provision of law to the contrary, reimbursement with state funds pursuant to the state foster care block grant shall not be available for tuition expenditures for foster children, including persons in need of supervision and adjudicated juvenile delinquents, made by a social services district located within a city having a population of one million or more. Social services districts must develop and implement children and family services delivery systems that are designed to reduce the need for and the length of foster care placements and must document their efforts in the multi-year consolidated services plan and

the annual implementation reports submitted pursuant to section thirty-four-a of this chapter.

(b) State reimbursement to each social services district shall be limited to the district's allocation of the foster care block grant. The state funds appropriated for the foster care block grant shall be apportioned among the social services districts by the office of children and family services based on the district's claiming history and other factors. Such apportionments shall be subject to the approval of the director of the budget.

(c) Any portion of a social services district's apportionment from the foster care block grant for a particular state fiscal year that is not claimed by such district during that state fiscal year may be used by such district for preventive services, independent living services or aftercare services claimed by such district during the next state fiscal year up to the amount remaining from the district's foster care block grant apportionment; provided, however, that any claims for preventive services, independent living services or aftercare services during the next state fiscal year in excess of such amount shall be subject to state reimbursement pursuant to subdivision one of this section. Any claims submitted by a social services district for reimbursement for a particular state fiscal year for which the social services district does not receive state or federal reimbursement during that state fiscal year may not be claimed against that district's block grant apportionment for the next state fiscal year.

3. To the extent that monies are made available to the commissioner of the office of children and family services from the children and family services quality enhancement fund established pursuant to section ninety-seven-yyy of the state finance law, the office of children and family services is authorized to conduct activities to increase the availability and/or quality of children and family services programs which may include, but not be limited to, staff recruitment, retention and training activities, research projects, and targeted services expansion and/or demonstration projects to test innovative models for service delivery which may include such areas as health, mental health and substance abuse services. Notwithstanding sections one hundred twelve and one hundred sixty-three of the state finance law, such

activities shall be conducted without competitive bid or request for proposal.

4. (a) A social services district, either individually or in combination with other social services districts, may establish managed care systems or other systems to provide children and family services other than child protective services investigations, in accordance with applicable laws and regulations. Such a system may include, but not be limited to, the establishment of capitated rates for service provided to children to prevent the placement of such children into foster care and to discharge such children from foster care to suitable, permanent, safe homes in a more timely manner through preventive services, intensified discharge planning, pre-adoptive services, after-care services and/or post-adoption services.

(b) Social services district payments to case managers or public or private service providers under such a system may be based on reimbursement rates established by the office of children and family services pursuant to section three hundred ninety-eight-a of this chapter, capitated rates or other payment mechanisms for all or a portion of the services, either separately or combined. To facilitate payments to case managers or providers, the office of children and family services may establish procedures for standardizing payments to managers or providers that enter into agreements with more than one social services district.

(c) Under such a system, a social services district may delegate responsibility for case management services to case managers or providers in a manner designed to afford case manager or provider accountability through the incorporation of quality control standards that provide appropriate monitoring of these services such as recognized accreditation mechanisms, performance audits by the social services district or other means.

(d) Under such a system, a social services district, in a purchase of service agreement for preventive services with an authorized agency, may delegate to such authorized agency the responsibility for approving and paying rent subsidies or assistance under paragraph (c) of subdivision five and/or subdivision seven of section four hundred nine-a of this chapter.

(e)(i) A social services district must obtain the office's prior approval of its plan for establishing and implementing such a system, in accordance with guidelines established by the office of children and family services.

(ii) Such a plan may include requests for a waiver of any statutory or regulatory requirements established pursuant to sections thirty-four-a, four hundred nine-d and four hundred nine-e of this chapter regarding the form, content, development, or amendment of the child welfare services plan component of the multi-year services plan and the annual implementation reports, family services plans and uniform case records.

(iii) Any request by a social services district for a waiver shall identify the specific statute or regulation to be waived, and include a justification for the waiver and alternative actions to be taken by the social services district to satisfy the purposes of the statute or regulation. The office of children and family services may grant any such waiver request, subject to the approval of the director of the budget, where the social services district applying for the waiver demonstrates a reasonable administrative or programmatic justification for the waiver. The potential fiscal impact of the waiver upon federal, state and local governments shall be evaluated by the office of children and family services as part of its review of the request for a waiver. The office of children and family services may impose durational and other reasonable conditions if an approval of the waiver is granted. Where a waiver is granted, the office of children and family services shall have the authority to establish alternative standards to be followed by social services officials. The office of children and family services may not grant a waiver that would fail to comply with applicable federal statutory or regulatory standards. The social services district may not revise local practice or policy unless and until the office of children and family services approves the waiver.

(iv) The office of children and family services shall provide notice to the governor and the legislature of each plan that is approved including a brief description of the plan and any waivers granted and any alternative standards established. The office shall provide an annual report to the governor and the legislature regarding the implementation of all approved plans during a calendar year by January thirty-first of the following year.

5. (a) Social services districts shall conduct eligibility determinations and submit claims for reimbursement in such form and manner and at such times and for such periods as the department of family assistance shall determine.

(b) When certified by the department of family assistance, state reimbursement shall be paid from the state treasury upon the audit and warrant of the comptroller out of funds made available therefor.

(c) The department of family assistance is authorized in its discretion to make advances to social services districts in anticipation of the state reimbursement provided for in this section.

6. (a) Payment of state reimbursement and advances shall be made to the fiscal officer of the social services district entitled thereto pursuant to the provisions of this chapter.

(b) Any inconsistent provision of the law or regulation of the department of family assistance notwithstanding, state reimbursement shall not be made for any expenditure made for the duplication of any grant or allowance for any period.

7. The office of children and family services shall not reimburse any claims for expenditures for those children and family services set forth in subdivisions one and two of this section that are submitted more than twenty-two months after the calendar quarter in which the expenditures were made.

8. Claims submitted by a social services district for reimbursement shall be paid after deducting any expenditures defrayed by fees, third party reimbursement, and any non-tax levy funds including donated funds that exceed the amount that may be claimed for state and federal reimbursement pursuant to paragraph (b) of subdivision one of this section.

9. Notwithstanding any other provision of law, the state shall not be responsible for reimbursing a social services district and a district shall not seek state reimbursement for any portion of any state disallowance or sanction taken against the social services district, or

any federal disallowance attributable to final federal agency decisions or to settlements made, on or after July first, nineteen hundred ninety-five, when such disallowance or sanction results from the failure of the social services district to comply with federal or state requirements, including, but not limited to, failure to document eligibility for the federal or state funds in the case record; provided, however, if the office of children and family services determines that any federal disallowance for services provided between January first, nineteen hundred ninety-nine and May thirty-first, nineteen hundred ninety-nine results solely from the late enactment of the state legislation implementing the federal adoption and safe families act, the state shall be solely responsible for the full amount of the disallowance or sanction. This provision shall be deemed to apply both prospectively and retroactively regardless of whether the disallowance or sanction is for services provided or claims made prior to or after April first, two thousand two.

10. (i) In accordance with regulations developed by the office of children and family services, the office shall measure each district's compliance with the federal child welfare outcome standards beginning no later than twenty months after the effective date of this section. The office is authorized to impose fiscal penalties against a social services district that fails to substantially comply with the outcome standards or to make sufficient progress towards complying with the outcome standards after developing and implementing a corrective action plan in the time and manner approved by the office. The imposition of a fiscal penalty shall be subject to an appeal process set forth in regulation. Any fiscal penalties received by the office of children and family services pursuant to this subdivision shall be deposited to the credit of the children and family services quality enhancement fund established pursuant to section ninety-seven-yyy of the state finance law. For social services districts in counties with less than fifteen thousand children under the age of eighteen, the office may waive the fiscal penalties and the need for a corrective action plan if the failure to substantially comply with the outcome standards was based on extraordinary circumstances. The office may provide fiscal incentives to social services districts with high performances on the federal child

welfare outcome standards. A social services district may pass on to its contract agencies some portion of the fiscal penalties or fiscal incentives that may be attributable to such agencies.

(ii) The office shall provide an annual report to the governor and the legislature detailing: each county's performance on the outcome standards, the amount of fiscal penalties imposed against each county, and the amount of fiscal penalties collected from each county. Said report shall be delivered to the director of the budget, the chair of the senate finance committee and the chair of the assembly ways and means committee annually on a calendar year basis, by March fifteenth of the following year.

11. The office of children and family services shall submit a preliminary report to the governor and the legislature on or before the thirty-first day of December, two thousand four providing preliminary data and information on the implementation of this section, and shall submit a final report by the fifteenth day of August, two thousand five assessing the implementation of and the outcomes resulting from the children and family services financing provisions established by this section through the thirtieth day of June, two thousand five. The final report shall include information regarding services delivery trends under the financing structure set forth in this section and innovative models of service provision to be considered for replication.

12. Notwithstanding any law to the contrary, on or after January first, two thousand twenty, the state shall not reimburse for the cost of any placement of persons in need of supervision under article seven of the family court act.

* NB Repealed June 30, 2027

TITLE 3 HOME RELIEF

- Section 157. Definitions.
158. Eligibility.
159. Safety net assistance.
160-a. Unexpended welfare balances.

163. Application.

165. Recipients authorized to work.

§ 157. Definitions. As used in this title. 1. Safety net assistance means allowances pursuant to section one hundred thirty-one-a of this article for all support, maintenance and need, and costs of suitable training in a trade to enable a person to become self-supporting, furnished eligible needy persons in accordance with applicable provisions of law, by a municipal corporation, or a town where safety net assistance is a town charge, to persons or their dependents in their abode or habitation whenever possible and includes such relief granted to veterans under existing laws but does not include hospital or institutional care, except as otherwise provided in this subdivision, or family assistance or medical assistance for needy persons granted under titles ten and eleven of this article, respectively, or aid to persons receiving federal supplemental security income payments and/or additional state payments. Safety net assistance may also be provided in a family home or boarding home, operated in compliance with the regulations of the department, and on and after January first, nineteen hundred seventy-four, in facilities in which a person is receiving family care or residential care, as those terms are used in title six of this article, and to persons receiving care in a facility supervised by the office of alcoholism and substance abuse services or in a residential facility for the mentally disabled approved, licensed or operated by the office of mental health or the office for people with developmental disabilities, other than those facilities defined in sections 7.17 and 13.17 of the mental hygiene law, in a developmental center facility operated by the office for people with developmental disabilities or residential care centers for adults operated by the office of mental health, when such type of care is deemed necessary. Payments to such homes and facilities for care and maintenance provided by them shall be at rates established pursuant to law and regulations of the department. The department, however, shall not establish rates of payment to such homes or facilities without approval of the director of the budget.

2. State aid means payments to a municipal corporation by the state for home relief furnished in accordance with this title.

3. Municipal corporation shall mean a county or city except a county wholly within a city.

§ 158. Eligibility. 1. A person is eligible for safety net assistance who is financially needy as determined in accordance with title one of this article and the regulations promulgated thereunder, is not in sanction status for a program authorized by this chapter and:

(a) resides in a family which is ineligible for family assistance or other assistance funded by the federal temporary assistance for needy families block grant because an adult in the family has exceeded the maximum durational limits on such assistance contained in section three hundred fifty of this chapter, or

(b) is an adult who would otherwise be eligible for family assistance except that he or she does not reside with a dependent child, or

(c) resides in a family that would otherwise be eligible for family assistance except that at least one adult or minor head of household has been determined in accordance with section one hundred thirty-two of this article to be abusing illegal substances or engaging in the habitual and excessive consumption of alcoholic beverages, or

(d) is under the age of eighteen, not living with his or her child and has no adult relatives with whom to reside, or

(e) resides in a family in which a person required to submit to screening or evaluation for use of illegal drugs or excess alcohol consumption pursuant to section one hundred thirty-two of this article refused to comply, or

(f) resides in a family which includes a person disqualified from receiving assistance pursuant to paragraph (f) of subdivision four of section one hundred thirty-two of this article, or

(g) is a qualified alien who is ineligible to receive assistance funded under the temporary assistance for needy families block grant solely because of section four hundred three of the federal personal responsibility and work opportunity reconciliation act of 1996 (P.L. 104-193) or is a noncitizen who is permanently residing under color of

law but is not a qualified alien.

2. A person who shall be eligible for family assistance according to the provisions of title ten of this article shall be granted family assistance and while receiving such aid shall not be eligible for safety net assistance. A person who is receiving federal supplemental security income payments and/or additional state payments shall not be eligible for safety net assistance. A person who is eligible for refugee cash assistance pursuant to the plan established pursuant to section three hundred fifty-eight of this article shall not be eligible for safety net assistance. An applicant for or recipient of safety net assistance shall be required, as a condition of eligibility for safety net assistance, to sign a written authorization allowing the secretary of the federal department of health and human services to pay to the social services district his or her initial supplemental security income payment and allowing the social services district to deduct from his or her initial payment the amount of safety net assistance granted for any month for which he or she subsequently is determined eligible to receive supplemental security income benefits. For the purposes of this subdivision the term "initial payment" shall refer to the first payment of supplemental security income benefits after a person files an application for benefits or after a person who has been terminated or suspended from eligibility for supplemental security income benefits subsequently has been found eligible for such benefits. An applicant for safety net assistance who reasonably appears to meet the criteria for eligibility for federal supplemental security income payments shall also be required, as a condition of eligibility for safety net assistance, to apply for such payments and shall, if otherwise eligible therefor, be eligible for safety net assistance until he or she has received a federal supplemental security income payment. Further, if an applicant for safety net assistance is required to apply for federal supplemental security payments and is denied, such person shall, subject to department regulation, also be required as a condition of eligibility to appeal his or her denial and exhaust his or her administrative remedies; such person shall remain eligible for safety net assistance, so long as he or she otherwise remains eligible while his or her appeal is pending.

3. A person shall not be eligible for safety net assistance who has made a voluntary assignment or transfer of property for the purpose of qualifying for such aid. A transfer of property made within one year of the date of application shall be presumed to have been made for the purpose of qualifying for such assistance.

4. Social services officials shall determine eligibility for safety net assistance within thirty days of receiving an application for safety net assistance. Such officials shall notify applicants of safety net assistance about the availability of assistance to meet emergency circumstances or to prevent eviction.

5. Application for or receipt of safety net assistance shall operate as an assignment to the state and the social services district concerned of any rights to support that accrue during the period that a family receives safety net assistance from any other person as such applicant or recipient may have either on their own behalf or on behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance. Applicants for or recipients of safety net assistance shall be informed that such application for or receipt of such benefits will constitute such an assignment. Such assignment shall terminate with respect to current support rights upon a determination by the social services district that such person is no longer eligible for safety net assistance, except with respect to the amount of any unpaid support obligation that has accrued during the period that a family received safety net assistance.

6. In addition to other eligibility requirements, each person who is applying for or receiving assistance under this title, and who is otherwise eligible for assistance under this title, shall be required, as a further condition of eligibility for such assistance:

(i) to assign to the state and the social services district any rights to support that accrue during the period that a family receives safety net assistance from any other person as such applicant or recipient may have either on their own behalf or on behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance; and

(ii) to cooperate with the state and the social services official, in accordance with standards established by regulations of the office of temporary and disability assistance consistent with federal law and regulations, in establishing the paternity of a child born out-of-wedlock for whom assistance under this title is being applied for or received, in their efforts to locate any absent parent and in obtaining support payments or any other payments or property due such person and due each child for whom assistance under this title is being applied for or received, except that an applicant or recipient shall not be required to cooperate in such efforts in cases in which the social services official has determined, in accordance with criteria, including the best interests of the child, as established by regulations of the office of temporary and disability assistance consistent with federal law and regulations, that such applicant or recipient has good cause to refuse to cooperate. Each social services district shall inform applicants for and recipients of safety net assistance required to cooperate with the state and local social services officials pursuant to the provisions of this paragraph, that where a proceeding to establish paternity has been filed, and the allegation of paternity has been denied by the respondent, there shall be a stay of all paternity proceedings and related social services district proceedings until sixty days after the birth of the child. Such applicants and recipients shall also be informed that public assistance and care shall not be denied during a stay on the basis of refusal to cooperate pursuant to the provisions of this paragraph.

7. As a condition of eligibility for the receipt of safety net assistance, every applicant for such assistance must:

(i) sign an agreement which provides that, if it is determined that money is owed to the social services district because of overpayments of safety net assistance to the applicant while a recipient of safety net assistance, the applicant agrees to repay any such money that remains due after the applicant ceases to receive safety net assistance; and

(ii) sign an assignment of future earnings on a form prescribed by the department to secure the repayment of any money that is determined, after providing the opportunity for a fair hearing in accordance with section twenty-two of this chapter, to be owed to the social services

district because of overpayments of safety net assistance to the applicant while a recipient of safety net assistance. The prescribed form shall include the following notice: "THIS AGREEMENT AUTHORIZES THE SOCIAL SERVICES DISTRICT TO RECOVER ANY OVERPAYMENT OF YOUR PUBLIC ASSISTANCE BENEFITS BY COLLECTING THE AMOUNT OF THE OVERPAYMENT DIRECTLY FROM YOUR FUTURE WAGES. IF YOU FAIL TO MAKE THE PAYMENTS REQUIRED BY A REPAYMENT AGREEMENT BETWEEN YOU AND THE SOCIAL SERVICES DISTRICT, THE SOCIAL SERVICES DISTRICT WILL FILE THIS AGREEMENT WITH YOUR EMPLOYER AND RECOVER THE OVERPAYMENT DIRECTLY FROM YOUR WAGES." In addition, the assignment of future earnings and the enforcement thereof must comply with all requirements of article three-A of the personal property law. The social services district may file the assignment of future earnings with the employer of the assignor only if the assignor fails to make payments of money owed to the social services district in accordance with the agreement required in paragraph (i) of this subdivision.

8. No person who resides with his or her minor child shall be eligible for safety net assistance except as provided in subdivision one of this section.

§ 159. Safety net assistance. 1. Safety net assistance shall be provided in amounts determined in accordance with article five and, where applicable, section one hundred seventeen of this chapter in the following manner.

(a) Cash assistance. Safety net assistance shall be granted in cash provided, however, that where the granting of cash may be deemed inappropriate by the social services district because of an inability to manage funds, or because less expensive or more easily controlled alternative methods of payment are available, or in the case of vendor payments to landlords made for individuals residing in public housing or for similar other reasons as established by department regulations, or where an individual has so requested, safety net assistance may be granted in whole or in part by restricted payment.

(b) Non-cash assistance. Safety net assistance paid as non-cash assistance shall be paid in the following manner and in the following order:

(i) Shelter assistance. A district shall make a payment for shelter by direct payment, two-party check or other form of restricted payment up to the maximum amount established by the department in regulation, provided that a district may make a payment for a recipient's assistance in excess of such maximum at the request of the recipient. Payments for shelter pursuant to this subparagraph shall be subject to the provisions of section one hundred forty-three-b of this chapter. A district shall make payment for shelter by two-party check upon request of the recipient; provided, however, that the district may make a direct payment whenever it finds that the recipient has persistently failed to make payment for rent without good cause as defined by regulations of the department. A district shall provide a recipient with proof of payment promptly upon request by the recipient.

(ii) Utility assistance. A social services district shall make a direct payment, a payment by two party check or other form of restricted payment on behalf of recipients of safety net assistance who pay separately for utilities. Payment for utilities shall include payment for fuel for heating on behalf of recipients who are eligible for a fuel for heating allowance pursuant to section one hundred thirty-one-a of this article and the department's regulations. Payments for fuel for heating shall not exceed the fuel for heating allowance except that a district may make a payment in excess of such amount at the request of the recipient. A district shall provide a recipient with proof of payment promptly upon request by the recipient.

(iii) Personal needs allowance. To the extent available within payment amounts authorized by sections one hundred seventeen, where applicable, and one hundred thirty-one-a of this chapter, a social services district shall provide each household with a personal needs allowance equal to twenty percent of the sum of the monthly standard of payment determined in accordance with the schedule contained in paragraph (a) of subdivision three of section one hundred thirty-one-a of this article and the appropriate amount of home energy grant and supplemental home energy grant as determined by the schedules in subdivisions three-c and three-d of section one hundred thirty-one-a of this article, for the appropriate household size.

(iv) Other assistance. The remainder of the safety net assistance shall be provided on a non-cash basis, provided that an appropriate

electronic benefit transfer system is operating in accordance with section twenty-one-a of this chapter in the social services district in which the recipient resides.

2. Persons eligible for safety net assistance because they are persons described in paragraph (b) or (d) of subdivision one of section one hundred fifty-eight of this title shall receive cash assistance, as defined in subdivision one of this section, for two years in a lifetime, whether or not consecutive, after the fourth day of August, nineteen hundred ninety-seven. On or after the first day of December, nineteen hundred ninety-nine, persons who are eligible for safety net assistance but who have received cash assistance for two years or more shall receive assistance only in the form of non-cash assistance. A person may receive cash assistance in excess of two years if the person is otherwise eligible for safety net assistance but the social services district in which the person resides has not yet implemented a non-cash assistance program. Persons who would otherwise be eligible for cash assistance pursuant to this subdivision who are referred to treatment pursuant to section one hundred thirty-two of this article or reside in a family where an adult or head of household has been referred to treatment shall receive assistance in the form of non-cash assistance.

3. Persons eligible for safety net assistance because they are persons described in paragraph (a) of subdivision one of section one hundred fifty-eight of this title shall receive assistance in the form of non-cash assistance.

4. Persons eligible for safety net assistance because they are persons described in paragraphs (c), (e) and (f) of subdivision one of section one hundred fifty-eight of this title shall receive assistance in the form of non-cash assistance.

5. Persons eligible for safety net assistance because they are persons described in paragraph (g) of subdivision one of section one hundred fifty-eight of this title shall receive cash assistance in the safety net program for two years in a lifetime, whether or not consecutive, after the fourth day of August, nineteen hundred ninety-seven. On or

after the first day of December, nineteen hundred ninety-nine, persons who are eligible for safety net assistance but have received cash assistance for two years or more in the safety net program shall receive assistance only in the form of non-cash assistance. A person may receive cash assistance in excess of two years if the person is otherwise eligible for safety net assistance but the social services district in which the person resides has not implemented a non-cash program.

6. In calculating the period of cash assistance for new residents of the state, periods in which they received reduced safety net assistance benefits pursuant to section one hundred seventeen of this chapter shall be included. In calculating the period of cash assistance, periods in which a recipient received federally funded refugee assistance shall be included.

7. (a) Notwithstanding subdivisions two and three of this section, adults eligible for safety net assistance who are exempt from the employment requirements contained in title nine-B of this article pursuant to section three hundred thirty-two of such article shall receive cash assistance, unless the adult has been determined to be abusing illegal substances or engaged in habitual consumption of alcohol.

(b) Notwithstanding subdivisions two and three of this section, adults eligible for safety net assistance who are also eligible to receive comprehensive health care services through a special needs plan defined in paragraph (n) of subdivision one of section three hundred sixty-four-j of this chapter shall receive cash assistance, regardless of whether such a plan is operating in the district in which they reside. An adult who would be eligible to receive such services through such a special needs plan but for the application of paragraph (d) of subdivision three of section three hundred sixty-four-j of this chapter shall also receive cash assistance.

8. Social services districts shall provide non-cash assistance to persons eligible for safety net assistance because they are persons described in paragraphs (b) and (d) of subdivision one of section one hundred fifty-eight of this title, who have received cash assistance for

two years or more, on or after the first day of December, nineteen hundred ninety-nine. Social services districts shall provide non-cash assistance for persons described in paragraph (a) of subdivision one of section one hundred fifty-eight of this title on or after the first day of December, two thousand. However, social services districts shall not implement subparagraph (iv) of paragraph (b) of subdivision one of this section until an appropriate electronic benefit transfer system is operating in the district.

9. Notwithstanding subdivision eight of this section or any other inconsistent provision of this section, the department may approve up to five social services districts to provide non-cash assistance to persons described in paragraphs (b), (d) and (g) of subdivision one of section one hundred fifty-eight of this title who have received cash assistance for two years, beginning the first day of December, nineteen hundred ninety-eight, provided that an appropriate electronic benefit transfer system is operating in the district.

10. Social services district providing safety net assistance to persons receiving care as defined in paragraphs (c), (d) and (e) of subdivision three of section two hundred nine of the social services law shall pay such facility at the rate provided for care and maintenance under the supplemental security income program for beneficiaries of that program in the same facility, less the amount of any personal needs allowance included in the supplemental security program. In addition, social services districts shall provide such persons receiving safety net assistance with a personal needs allowance in the amount included in the supplemental security payment level as a personal needs allowance for recipients of that program residing in the particular facility.

11. The provisions of section three hundred forty-nine-a of this article, with respect to victims of domestic violence, shall apply to applicants for and recipients of safety net assistance to the same extent as it applies to applicants for and recipients of family assistance.

12. To the extent allowable under federal law and to the extent that

the state has spending sufficient to exceed the federally required maintenance of effort for the temporary assistance for needy families block grant, the office of temporary and disability assistance may maximize the state's work participation rate by targeting safety net assistance payments utilized to meet the federally required maintenance of effort for the temporary assistance for needy families block grant to safety net assistance cases that are not exempt from work activities, that have not been in sanction status for over three months, and that do not include two parents who are eligible for assistance who live in the same dwelling unit, or to other categories of cases, as defined by the office of temporary and disability assistance, that have no other potential impediments to participating in countable federal work activities.

§ 160-a. Unexpended welfare balances. 1. Notwithstanding the provisions of any general special or local law, where a city is no longer responsible for the cost of public assistance or care or any form thereof as provided by sections seventy-two and seventy-three of this chapter or operates pursuant to section seventy-four-a of this chapter, any unexpended city welfare funds not due and owing to the state or to a social services district which shall remain in the treasury of such city on the first day of January of any year may be transferred, appropriated and expended for any lawful city purpose.

2. Notwithstanding the provisions of any general or special law, where a town is no longer responsible for the cost of any type of public assistance or care, any unexpended town welfare funds which shall remain in the hands of the supervisor or any other town officer on the first day of January of any year and which are not due and owing to the state or to a public welfare district may be transferred, appropriated and expended for any lawful town purpose.

§ 163. Application. The provisions of any city charter or other local or special law forbidding the granting of outdoor relief shall not apply to the granting of home relief under this chapter.

§ 165. Recipients authorized to work. Notwithstanding any other provision of law, a social services official may, in his or her discretion, authorize a recipient of safety net assistance to work and retain the income derived therefrom without any diminution or with partial diminution of safety net assistance where such an arrangement would, in his or her opinion, lead to elimination of the recipient from the assistance rolls in a reasonable length of time. The commissioner shall promulgate rules and regulations to effectuate the purpose of this section.

TITLE 4
VETERAN ASSISTANCE

- Section 168. Definitions.
169. Eligibility.
170. Character.
171. Responsibility; county social services districts; city social services districts; cities; towns.
172. Moneys to be provided.
173. Election to administer veteran assistance by county public welfare district; organization.
- 174-b. Authorization of veteran assistance in towns.
175. Administration of veteran assistance in New York city.
176. Veteran advisory committees; duties.
177. Care in public homes; consent of veteran or other eligible persons.
178. Veteran assistance financing; state reimbursement.

§ 168. Definitions. As used in this title:

1. Veteran means a person who has served in the armed forces of the United States or who was a recipient of the armed forces expeditionary medal, navy expeditionary medal or marine corps expeditionary medal for participation in operations in Lebanon from June first, nineteen hundred

eighty-three to December first, nineteen hundred eighty-seven, in Grenada from October twenty-third, nineteen hundred eighty-three to November twenty-first, nineteen hundred eighty-three, or in Panama from December twentieth, nineteen hundred eighty-nine to January thirty-first, nineteen hundred ninety, and who (a) has been honorably discharged or released under honorable circumstances from such service or furloughed to the reserve, or (b) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (c) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service.

2. Veteran organization means the:

- (a) Grand Army of the Republic;
- (b) United Spanish War Veterans;
- (c) American Legion;
- (d) Disabled American Veterans;
- (e) Veterans of Foreign Wars of the United States;
- (f) Jewish War Veterans of the United States, Incorporated;
- (g) Catholic War Veterans, Incorporated;
- (h) Army and Navy Union of the United States;
- (i) Italian American War Veterans of the United States, Incorporated;
- (j) Polish Legion of American Veterans, Incorporated;
- (k) The Marine Corps League;
- (l) Military Order of the Purple Heart, Inc.;
- (m) Amvets.
- (n) American Veterans of World War II;
- (o) Veterans of World War I, U.S.A., Inc.
- (p) Polish-American Veterans of World War II;
- (q) Masonic War Veterans of the state of N.Y., Inc.;
- (r) American Gold Star Mothers, Inc.;
- (s) Regular Veterans Association, Inc.;
- (t) Vietnam Veterans of America;
- (u) Eastern Paralyzed Veterans Association;

3. Veteran assistance means safety net assistance given pursuant to

the provisions of this title, to the persons eligible therefor.

§ 169. Eligibility. Each of the following persons who is a resident of the state on the date of making application for veteran assistance shall be eligible for such assistance if he or she is unable to provide for himself or herself, or is unable to secure support from a legally responsible relative, and is not receiving needed assistance or care under other provisions of this chapter, or from other sources:

1. A veteran;
2. The wife, husband, child or grandchild under the age of twenty-one years, father, mother, stepfather or stepmother of a veteran, if living with the veteran;
3. The unremarried surviving spouse of a veteran;
4. The dependent children under the age of twenty-one years or the incapacitated children of a deceased veteran.

§ 170. Character. Except as hereinafter otherwise prescribed, veteran assistance shall be granted in cash provided, however, that in an individual case where the granting of cash may be deemed impracticable, veteran assistance may be granted in whole or in part by order.

§ 171. Responsibility; county social services districts; city social services districts; cities; towns. 1. A county social services district which has elected, pursuant to the provisions of this title, to administer veteran assistance shall be responsible for providing veteran assistance, and the expense thereof, to:

(a) persons residing or found therein, subject to reimbursement by the state;

(b) persons residing or found in any town in the county, when the expense of providing safety net assistance to persons residing or found

in such towns is a county charge pursuant to the provisions of section seventy-two and section seventy-three of this chapter;

(c) persons residing or found in a city forming part of the county social services district, when the expense of providing safety net assistance to persons residing or found in such city is a county charge pursuant to the provisions of section seventy-two and section seventy-three of this chapter.

2. A town responsible for the expense of providing safety net assistance to persons residing or found therein, pursuant to section sixty-nine, which has elected to administer veteran assistance, pursuant to the provisions of this title, shall be responsible for providing veteran assistance to local charges residing or found therein, and the expense thereof.

§ 172. Moneys to be provided. 1. The social services official of every county, city or town responsible for veteran assistance, under the provisions of this title, shall include in his or her annual estimate for safety net assistance the amount necessary to carry out the provisions of this title in such county, city or town.

2. Legislative bodies shall make appropriations and raise money for veteran assistance in the same manner as for safety net assistance.

§ 173. Election to administer veteran assistance by county public welfare district; organization. 1. When a majority of the veteran organizations in a county, by and through their respective county divisions, file with the clerk of the board of the supervisors of the county, a petition addressed to the board of supervisors of the county requesting that veteran assistance be administered by such county, the board of supervisors may, by resolution passed by a majority vote, establish a division or bureau, or direct that a division or bureau be established, within the county department of public welfare, and under the direction of the county commissioner of public welfare, for the purpose of administering veteran assistance.

2. In the event that the county board of supervisors shall pass such a resolution, it shall also authorize and direct the county commissioner of public welfare to appoint a veteran, as herein defined, as deputy commissioner or director of the veteran assistance division or bureau, as the case may be.

3. The county commissioner shall transfer to the veteran assistance division or bureau so much of the staff of the county welfare department as may be necessary or practicable to administer and execute the functions, powers and duties assigned to such division or bureau. Officers and employees shall be transferred without further examination or qualification and they shall retain their respective civil service classification and status. The civil service qualifications for all positions in the veteran assistance division or bureau shall be the same as required for the same or similar positions in the other divisions or bureaus of the county department of welfare, except that the qualifications for the position of the deputy commissioner or director, as the case may be, shall also require that he be a veteran.

4. The salaries or compensation paid to employees of the veteran assistance division or bureau shall be subject to reimbursement by the state under the same terms and conditions as are applicable to other employees of the county department of public welfare under the provisions of this chapter.

5. Upon recommendation of the county commissioner of public welfare, the county board of supervisors may authorize, by resolution passed by a majority vote, the veteran assistance division or bureau to administer, in addition to veteran assistance, such other forms or categories of public assistance and care as may be practicable or necessary, provided that sufficient qualified staff shall be available for transfer or assignment to the veteran assistance division or bureau to execute and perform the additional functions and duties so assigned to such division or bureau.

6. The board of supervisors may also authorize the commissioner of

public welfare to establish and operate a branch of the veteran assistance division or bureau in each or any major population center in the county.

§ 174-b. Authorization of veteran assistance in towns. 1. The town board of a town responsible for the expense of providing safety net assistance to persons residing or found therein, upon the presentation of a petition to it by one or more posts, camps or garrisons of one or more veteran organizations in the town, requesting that veteran assistance be authorized by the local social services officer, may, by resolution adopted by majority vote, authorize and direct the local social services officer to authorize and furnish veteran assistance to persons residing or found therein. Thereafter, the local social services officer shall have, exercise and perform the same powers and duties with relation to veteran assistance as he has, exercises and performs with relation to safety net assistance.

2. When the town board of a town has authorized and directed the local social services officer to authorize and furnish veteran assistance, if neither the local social services officer, or the supervisor of the town authorized to act as such official, nor the assistant local social services officer, if there be one, is a veteran, as herein defined, the town board may appoint, or authorize the local social services officer to appoint, a veteran, as herein defined, as a deputy or assistant local social service officer.

§ 175. Administration of veteran assistance in New York city. 1. In the city of New York, veteran assistance committee means each welfare committee chosen by the county unit of each veteran organization.

2. In the city of New York, veteran assistance shall be paid or granted direct to the beneficiaries by the commissioner of public welfare through the veterans division of the department of public welfare on a written recommendation signed by three members of the veteran assistance committee of the county in which the applicant

resides.

3. The comptroller of the city of New York shall, out of the amount appropriated for such assistance, provide a cash fund to be placed under the control of the commissioner from which to pay such assistance, and he shall replenish said fund upon presentation of properly receipted recommendations by the county veteran assistance committees for the amounts paid out of said fund.

§ 176. Veteran advisory committees; duties. 1. (a) In every county, city or town which has elected to furnish veteran assistance, pursuant to the provisions of this title, in which there are more than one veteran organization or more than one post, camp or garrison of any veteran organization, there shall be appointed and constituted a joint veteran assistance advisory committee to consist of one representative from each post, camp and garrison of each such veteran organization, chosen in such manner as the post, camp or garrison shall direct, to serve for one year, commencing the first day of January. Each such committee shall choose a chairman and such other officers as it may deem necessary or require. In counties and cities the deputy commissioner or director of the veteran assistance division or bureau of the public welfare department shall serve ex officio as secretary of the committee. In towns, the town welfare officer shall serve ex officio as such secretary, unless he is not a veteran and his deputy or assistant is a veteran, in which case such deputy or assistant, as the case may be, shall serve as such secretary.

(b) In any town which has elected to furnish veteran assistance pursuant to the provisions of this title, in which there is only one veteran organization and only one post, camp or garrison thereof, such post, camp or garrison shall constitute a veterans assistance advisory committee, consisting of its chairman and two other representatives designated by it, which committee shall serve for one year commencing the first day of January. The town welfare officer, his deputy or assistant, if a veteran, shall serve ex officio as the secretary of the committee; if neither be a veteran, the town welfare officer shall serve as such secretary.

2. All committees constituted under subdivision one of this section shall have and perform the following functions and duties:

(a) (1) In the case of county or city committees, to submit to the public welfare official of the county or city in which it operates a list of veterans qualified to serve as deputy commissioner or director of the veterans assistance division or bureau in the county or city department of welfare, as the case may be, whenever there be a vacancy in that office.

(2) In the case of town committees, to submit to the town public welfare officer a list of veterans qualified to serve as his deputy or assistant to furnish veteran assistance, whenever there be a vacancy in that office.

(b) To keep informed all posts, camps or garrisons of each veteran organization in its territory concerning the administration of veteran assistance and the activities of the veteran assistance division or bureau.

(c) To transmit to the veteran assistance division, bureau or official administering veteran assistance in its territory, the views of the veteran organizations operating in such territory.

(d) To advise the public welfare official of the county, city or town administering veteran assistance in its territory on matters relating to assistance and care given to veterans and their families.

§ 177. Care in public homes; consent of veteran or other eligible persons. Any person eligible for veteran assistance may receive care in a public home with his consent.

§ 178. Veteran assistance financing; state reimbursement. All provisions of this chapter or of any other law relating to the financing of safety net assistance by counties, cities and towns, or reimbursement by the state for safety net assistance expenditures made by counties, cities and towns, shall apply with the same force and effect to veteran assistance.

TITLE 5
PUBLIC INSTITUTIONAL CARE
FOR ADULTS

- Section 193. Public homes.
- 194. Powers and duties of commissioners of public welfare in relation to public homes.
 - 194-a. Additional power of work assignment granted to commissioner of public welfare of Monroe county.
 - 195. Medical care.
 - 196. Report on needs of incarcerated individuals of public homes.
 - 197. Incarcerated individuals' right of appeal.
 - 198. Control of incarcerated individuals.
 - 199. Power of commissioner of public welfare to detain certain incarcerated individuals.
 - 200. Powers and duties of the commissioner of public welfare in relation to the public farm.
 - 202. Construction and administration of public homes.

§ 193. Public homes. 1. Each public welfare district may establish and maintain a public home, which may include an infirmary for the care of chronically sick patients in addition to facilities for the care of acutely ill patients, and may operate a farm in connection therewith, or may contract with another public welfare district for the care and maintenance of persons in need of institutional care who are unable to pay for such care. If facilities are available in a public home the commissioner of public welfare may establish regulations authorizing the admission and care therein of persons in need of institutional care who are able and willing to pay, in whole or in part for such care and prescribing the conditions under which such admissions may be made. A person in need of institutional care who is unable to pay therefor shall not be refused care in the public home operated and maintained by the public welfare district in which he resides or is found, when persons able to pay for their care are receiving care in such home.

2. If the state commissioner of social welfare shall approve, a public welfare district may use a building or buildings formerly used as a tuberculosis hospital or sanatorium, or as a part thereof, for a public home, a public home infirmary or an infirmary of a public home.

§ 194. Powers and duties of commissioners of public welfare in relation to public homes. Commissioners of public welfare shall

1. be responsible for the management of the home and for the care of its incarcerated individuals,

2. have control of the admission and discharge of incarcerated individuals of the home,

3. within the limits of the appropriations made for the purpose, appoint qualified physicians, matrons, nurses, officers and employees, and vest in them such powers as he may deem necessary for the management of the home,

3-a. have the authority, in the event the home includes an infirmary for the care of chronically sick patients, to enter into contracts, subject to the written approval of the department, with any medical school or non-profit hospital, organized pursuant to the laws of the state of New York, whereby such medical school or non-profit hospital shall agree to provide and supervise all or part of the professional and related staff necessary for the operation of the infirmary. The personnel so provided by such medical school or non-profit hospital shall not be deemed to be employees of the public welfare district.

4. purchase all furniture, implements, food, materials and equipment necessary for the upkeep of the home and for the care of the needy in the home, unless such powers have been vested in some other purchasing agency,

5. classify the incarcerated individuals of the home, and provide the type of care best fitted to their needs and carry out the

recommendations of the attending physician in regard to their care,

6. establish rules for the administration of the public home and for the conduct and employment of the incarcerated individuals thereof; but such rules shall not be valid unless approved in writing by the department,

7. as far as practicable provide suitable employment for any incarcerated individual whom the attending physician pronounces able to work, assigning such incarcerated individuals to such labor in connection with the farm and garden, or the care and upkeep of the buildings or other suitable tasks in the public home as they may be deemed capable of performing, and providing occupational and other diversions as may be for the best interests of the incarcerated individuals,

8. when in their individual judgment and discretion it appears advisable, for purposes of rehabilitation, to provide incentive compensation to an incarcerated individual, in any amount or amounts totalling ten dollars or less per month, for work assigned and performed in or about the public home, farm and garden; but the payment of any such reward shall not be deemed, for the purposes of any law, to make the incarcerated individual receiving the same an employee of the public home or of the county or city maintaining such home,

8-a. deposit as prescribed in section eighty-seven of this chapter, any and all moneys received by him or her for the use of a particular incarcerated individual or incarcerated individuals of the public home,

9. when an appropriation is made for the purpose, appoint a superintendent of the public home who shall reside thereat and exercise such of the powers and carry out such of the duties above mentioned in connection with the public home as the commissioner may direct; provided, however, that the legislative body of the county or city within which a public welfare district is located may, if adequate supervisory personnel are on duty at all times, permit the superintendent to reside off the premises of the public home,

10. reside at the public home unless a superintendent has been appointed as above provided; provided, however, that the local legislative body of the county or city within which a public welfare district is located may, if adequate supervisory personnel are on duty at all times, permit the commissioner to reside off the premises of the public home.

§ 194-a. Additional power of work assignment granted to commissioner of public welfare of Monroe county. When, pursuant to the provisions of subdivision eight of section one hundred ninety-four of this title, the commissioner of public welfare of Monroe county deems it advisable to assign work to an incarcerated individual, such work may be assigned and performed in or about not only the public home, farm and garden but also any other property maintained under his supervision. The payment of any reward pursuant to such subdivision eight shall not be deemed, for the purposes of any law, to make the incarcerated individual receiving the same an employee of the public home or of the county or city maintaining such home or such other property maintained under the commissioner's jurisdiction.

§ 195. Medical care. 1. Each incarcerated individual shall be examined by the attending physician or physicians as soon after admission to the public home as practicable.

2. A medical record shall be kept for each incarcerated individual, in which shall be recorded his or her condition on admission, the physician's recommendation of the type of care to be given him or her and any medical attention given to the incarcerated individual subsequent to the examination on admission.

3. The physician shall be responsible for the medical care given incarcerated individuals who are ill, and shall give such orders as he considers necessary for their welfare. He or she shall (a) visit the public home at regular intervals and shall re-examine the incarcerated

individuals periodically, as the need of the incarcerated individuals may require,

(b) also visit the public home, on call of the superintendent, in case of the illness of any incarcerated individual,

(c) make such recommendations to the commissioner of public welfare as to changes, improvements and additional equipment as he may deem necessary for the adequate care of the incarcerated individuals of such home.

4. Any physician who accepts an appointment as attending physician to the incarcerated individuals of a public home shall be obligated to carry out the provisions of this section. The commissioner may dismiss an attending physician who fails to fulfill such duties.

§ 196. Report on needs of incarcerated individuals of public homes. It shall be the duty of the commissioner of public welfare to report to the legislative body as to the needs of the home and to make recommendations of any changes, improvements, additional equipment or other provision which he or she may consider necessary to provide adequate care for the incarcerated individuals.

§ 197. Incarcerated individuals' right of appeal. Any incarcerated individual of a public home, who considers himself or herself to have a cause for complaint against any officer or employee of the public home, shall have the right of appeal to the superintendent of the public home, and to the commissioner of public welfare.

§ 198. Control of incarcerated individuals. If any incarcerated individual shall wilfully disobey the rules of the home in such a way as to be detrimental to the welfare of the other incarcerated individuals, the commissioner may institute a proceeding in a court of competent jurisdiction against such incarcerated individual for disorderly conduct.

§ 199. Power of commissioner of public welfare to detain certain incarcerated individuals. The commissioner of public welfare shall have power to detain in the public home, pending a vacancy for such person in a state institution, a person over the age of sixteen who has been certified as an individual with a developmental disability in accordance with the provisions of the mental hygiene law and for whom an application for admission to a state institution has been made. Whenever the commissioner shall so detain an incarcerated individual in the public home he or she shall at once notify the state department of mental hygiene.

§ 200. Powers and duties of the commissioner of public welfare in relation to the public farm. If the legislative body of a public welfare district shall authorize the maintenance of a public farm in connection with the public home, the commissioner of public welfare shall

1. be responsible for the management of the public farm,
2. utilize the labor of such of the incarcerated individuals of the public home as may in the judgment of the attending physician be able to work on the farm,
3. make all purchases necessary for the operation of the public farm unless such powers have been vested in some other purchasing agency,
4. sell such surplus produce and proceeds of such farm and labor as may remain after the needs of the incarcerated individuals of the public home have been supplied,
5. employ, within the limits of the appropriation made for the purpose, such laborers as may be necessary for the management of the farm,
6. keep a record of the work of the farm, including the labor of the incarcerated individuals of the public home on the farm and of the

produce and proceeds of the farm supplied for the use of the public home, with the estimated value of such produce and proceeds,

7. when an appropriation has been made for the purpose, appoint an officer who shall be responsible for exercising such of the powers and carrying out such of the duties above mentioned as the commissioner may direct,

8. make an annual report to the legislative body in regard to the receipts and disbursements of the public farm and the cost of its operation.

§ 202. Construction and administration of public homes. 1. No building to be used as a public home shall be constructed, or remodeled, in whole or in part, except on plans and designs approved in writing by the department provided that such approval in writing in the city of New York shall be by the mayor of said city, and except that plans and designs for the construction of or remodeling in whole or in part of a public home infirmary, or the infirmary of a public home, shall be approved in accordance with the provisions of article twenty-eight of the public health law.

2. It shall be the duty of the department to send to the legislative body and the public welfare official in charge of a public home a written statement as to any abuses, defects or evils, which it may find in the public home or in the administration thereof, and such legislative body and official shall take action to remedy such condition in accordance with such advice.

TITLE 6

ADDITIONAL STATE PAYMENTS FOR ELIGIBLE AGED, BLIND AND DISABLED PERSONS

Section 207. Declaration of purpose.

208. Definitions.

209. Eligibility.

- 210. Mandatory minimum state supplementation.
- 211. Agreements for federal administration.
- 212. Responsibility; financing.

§ 207. Declaration of purpose. The legislature hereby declares its commitment to meeting the income needs of aged, blind and disabled persons who are receiving basic supplemental security income benefits or whose income and resources, though above the standard of need for the supplemental security income program, is not sufficient to meet those needs. In order to maintain assistance for such persons at a level consistent with their needs, and in order to fully employ available federal aid for the benefit of such persons residing in this state, there is hereby established a state-wide program of additional state payments for aged, blind and disabled persons.

§ 208. Definitions. When used in this title:

1. "Supplemental security income benefits" shall mean payments made by the secretary of the federal department of health, education and welfare to aged, blind and disabled persons pursuant to title sixteen of the federal social security act.

2. "Additional state payments" shall mean payments made to aged, blind and disabled persons who are receiving, or who would but for their income be eligible to receive, federal supplemental security income benefits, whether made by the office of temporary and disability assistance in accordance with the provisions of this title and with title sixteen of the federal social security act, or by the commissioner of the United States social security administration, pursuant to and in accordance with the provisions of this title, title sixteen of the federal social security act, and provisions of any agreement entered into between the state and such commissioner by which the commissioner agrees to administer such additional state payments on behalf of the state. Such payments are equal to the standard of need, less the greater of the federal benefit rate or countable income. For purposes of this

title, the "federal benefit rate" shall mean the maximum payment of supplemental security income payable to a person or couple with no countable income.

3. The "secretary" shall mean the secretary of the federal department of health, education and welfare.

4. A "blind person" shall mean a person who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees shall be considered, for the purposes of the first sentence of this subdivision, as having a central visual acuity of 20/200 or less.

5. A "disabled person" shall mean a person who is unable to engage in any substantial gainful activities by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months; or who, in the case of a child under the age of eighteen, suffers from any medically determinable physical or mental impairment of comparable severity.

6. "Countable income" shall mean all of a person's income, in cash or in kind, both earned and unearned, which is not excluded by federal law or regulations or by regulations of the department in determining the need of an individual for supplemental security income benefits or additional state payments, including the income of an individual's eligible spouse, and, if the individual is a child, certain income of such individual's parent or parents with whom he resides.

7. "Earned income" shall mean wages and earnings from self-employment in accordance with the regulations of the department.

8. "Unearned income" shall mean all other income, in accordance with the regulations of the department.

9. "Countable resources" shall mean cash or other liquid assets or any real or personal property that an individual or couple owns and could convert to cash to be used for his or their support and maintenance, which is not excluded by federal law or regulations or by regulations of the department in the determination of the need of an individual for supplemental security income benefits or additional state payments.

10. An "eligible individual" shall mean a person who is eligible to receive additional state payments pursuant to section two hundred nine of this title.

11. An "eligible couple" shall mean an eligible individual and his or her aged, blind or disabled spouse, who are living together or who are living apart but have been living apart for less than six months.

12. The term "standard of need" shall refer solely to the maximum level of income a person or couple may have and remain eligible for additional state payments under this title. The term applies solely to the program of additional state payments and has no application to any other program or benefit.

§ 209. Eligibility. 1. (a) Notwithstanding any law to the contrary, no person shall be eligible for any payment pursuant to this title who is ineligible for supplemental security income for any reason other than having countable income exceeding the federal benefit rate for such program. An individual shall be eligible to receive additional state payments if he or she has applied for supplemental security income benefits, has received a determination with respect to such application and:

(i) is over sixty-five years of age, or is blind or disabled; and

(ii) does not have countable income in an amount equal to or greater than the standard of need established in subdivision two of this section; and

(iii) does not have countable resources in an amount equal to or greater than the amount of resources an individual or couple may have and remain eligible for supplemental security income benefits pursuant

to federal law and regulations of the department; and

(iv) is a resident of the state and is either a citizen of the United States or is not a noncitizen who is or would be ineligible for federal supplemental security income benefits solely by reason of noncitizen status.

(b) A person who is properly receiving supplemental security income benefits shall be deemed to have met the eligibility criteria contained in subparagraphs (i), (ii) and (iii) of paragraph (a) of this subdivision.

(c) A person who, for the month of December, nineteen hundred seventy-three, properly received a grant of assistance under the state's program of old age assistance, assistance to the blind, aid to the disabled or the combined program of aid to aged, blind and disabled persons, shall be deemed to have met the eligibility criteria of this subdivision; provided, however, that a disabled person who did not also receive such a grant for any month prior to July, nineteen hundred seventy-three, shall not be deemed to have met such eligibility criteria under this paragraph. A person who is deemed eligible under this paragraph shall continue to be deemed to meet the eligibility criteria of this subdivision so long as he continues to be blind or disabled, as the case may be, pursuant to state standards in effect for October, nineteen hundred seventy-two, and so long as he continues to reside in the state.

(d) Any inconsistent provision of this title notwithstanding, an individual shall not be eligible for additional state payments with respect to any month, if throughout such month, (i) he is an inmate of a public institution, or (ii) he is an inmate in a medical facility which is receiving medical assistance payments for him at a level exceeding fifty per cent of the cost of his care, or (iii) he is an inmate in a medical facility which is not certified under the state's medical assistance program. Nor shall an individual be eligible for additional state payments for any month in which he is ineligible for supplemental security income benefits because of a failure to file for other non-public assistance benefits to which he might be entitled, or because of a refusal to participate in treatment for drug addiction or alcoholism or because he has remained outside the United States for all of such month, or because he has refused vocational rehabilitation.

2. The following amounts shall be the standard of monthly need for determining eligibility for and the amount of additional state payments, depending on the type of living arrangement and the geographic area in which the eligible individual or the eligible couple resides:

- * (a) On and after January first, two thousand twenty-five, for an eligible individual living alone, \$1,054.00; and for an eligible couple living alone, \$1,554.00.

- * NB Effective until December 31, 2026

- * (a) On and after January first, two thousand twenty-six, for an eligible individual living alone, \$1,081.00; and for an eligible couple living alone, \$1,595.00.

- * NB Effective December 31, 2026

- * (b) On and after January first, two thousand twenty-five, for an eligible individual living with others with or without in-kind income, \$990.00; and for an eligible couple living with others with or without in-kind income, \$1,496.00.

- * NB Effective until December 31, 2026

- * (b) On and after January first, two thousand twenty-six, for an eligible individual living with others with or without in-kind income, \$1,017.00; and for an eligible couple living with others with or without in-kind income, \$1,537.00.

- * NB Effective December 31, 2026

- * (c) On and after January first, two thousand twenty-five, (i) for an eligible individual receiving family care, \$1,233.48 if such individual is receiving such care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible couple receiving family care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland, two times the amount set forth in subparagraph (i) of this paragraph; or (iii) for an eligible individual receiving such care in any other county in the state, \$1,195.48; and (iv) for an eligible couple receiving such care in any other county in the state, two times the amount set forth in subparagraph (iii) of this paragraph.

- * NB Effective until December 31, 2026

- * (c) On and after January first, two thousand twenty-six, (i) for an eligible individual receiving family care, \$1,260.48 if such individual

is receiving such care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible couple receiving family care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland, two times the amount set forth in subparagraph (i) of this paragraph; or (iii) for an eligible individual receiving such care in any other county in the state, \$1,222.48; and (iv) for an eligible couple receiving such care in any other county in the state, two times the amount set forth in subparagraph (iii) of this paragraph.

* NB Effective December 31, 2026

* (d) On and after January first, two thousand twenty-five, (i) for an eligible individual receiving residential care, \$1,402.00 if such individual is receiving such care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible couple receiving residential care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland, two times the amount set forth in subparagraph (i) of this paragraph; or (iii) for an eligible individual receiving such care in any other county in the state, \$1,372.00; and (iv) for an eligible couple receiving such care in any other county in the state, two times the amount set forth in subparagraph (iii) of this paragraph.

* NB Effective until December 31, 2026

* (d) On and after January first, two thousand twenty-six, (i) for an eligible individual receiving residential care, \$1,429.00 if such individual is receiving such care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible couple receiving residential care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland, two times the amount set forth in subparagraph (i) of this paragraph; or (iii) for an eligible individual receiving such care in any other county in the state, \$1,399.00; and (iv) for an eligible couple receiving such care in any other county in the state, two times the amount set forth in subparagraph (iii) of this paragraph.

* NB Effective December 31, 2026

* (e) On and after January first, two thousand twenty-five, (i) for an eligible individual receiving enhanced residential care, \$1,661.00; and (ii) for an eligible couple receiving enhanced residential care, two

times the amount set forth in subparagraph (i) of this paragraph.

* NB Effective until December 31, 2026

* (e) On and after January first, two thousand twenty-six, (i) for an eligible individual receiving enhanced residential care, \$1,688.00; and (ii) for an eligible couple receiving enhanced residential care, two times the amount set forth in subparagraph (i) of this paragraph.

* NB Effective December 31, 2026

* (f) The amounts set forth in paragraphs (a) through (e) of this subdivision shall be increased to reflect any increases in federal supplemental security income benefits for individuals or couples which become effective on or after January first, two thousand twenty-six but prior to June thirtieth, two thousand twenty-six.

* NB Effective until December 31, 2026

* (f) The amounts set forth in paragraphs (a) through (e) of this subdivision shall be increased to reflect any increases in federal supplemental security income benefits for individuals or couples which become effective on or after January first, two thousand twenty-seven but prior to June thirtieth, two thousand twenty-seven.

* NB Effective December 31, 2026

2-a. Notwithstanding any inconsistent provision of subparagraph (ii) of paragraph (d) of subdivision one of this section, an individual who is receiving or is eligible to receive federal supplemental security income payments and/or additional state payments and who is a resident of a residential health care facility as defined by section twenty-eight hundred one of the public health law, shall, in accordance with regulations of the department, be entitled to a state payment for personal needs in the amount of fifteen dollars a month, provided, however, that on or after January first, nineteen hundred eighty-eight the state payment for personal needs for such persons shall be in the amount of twenty-five dollars a month. Notwithstanding any inconsistent provision of subparagraph (ii) of paragraph (d) of subdivision one of this section, on or after January first, nineteen hundred eighty-eight, a resident of an intermediate care facility operated or issued an operating certificate by the office for people with developmental disabilities or a patient of a hospital operated by the office of mental health as defined in subdivision ten of section 1.03 of the mental

hygiene law who is receiving or is eligible to receive supplemental security income payments and/or additional state payments shall receive a state payment for personal needs in the amount of five dollars a month. The department is authorized to promulgate necessary regulations to provide for the time and manner for payment of such personal allowance to such individuals.

3. As used in subdivision two of this section:

(a) "Living alone" shall mean living in a private household composed of one eligible individual or one eligible couple.

(b) "Living with others" shall mean living in a private household composed of an eligible individual or couple and at least one other person; or, with respect to any child who is not the head of a household and who is under the age of eighteen, or under the age of twenty-two if attending school, any living arrangement other than residential care in a facility operated or licensed by an office of the department of mental hygiene.

* (c) "Receiving family care" shall mean residing in a family type home for adults which is certified by the department and supervised by a social services district, in accordance with applicable provisions of law and regulations, or a family care home certified by the appropriate office of the department of mental hygiene, in accordance with applicable provisions of law and regulations or participating in a foster family care demonstration program pursuant to section three hundred sixty-four-h of this chapter.

* NB Effective until December 31, 2027

* (c) "Receiving family care" shall mean residing in a family type home for adults which is certified by the department and supervised by a social services district, in accordance with applicable provisions of law and regulations, or a family care home certified by the appropriate office of the department of mental hygiene, in accordance with applicable provisions of law and regulations.

* NB Effective December 31, 2027

(d) "Receiving residential care" shall mean residing in a residence for adults or a privately operated community residence, residential substance abuse treatment program or community residential facility for alcoholism, certified by the appropriate office of the department of

mental hygiene; or a residential care center for adults certified by the office of mental health, in accordance with applicable law and regulations. For the purpose of this paragraph, a person receiving care in an intermediate care facility, certified by the department of health or by the appropriate office of the department of mental hygiene, or receiving respite services shall not be deemed to be receiving residential care.

(e) "Receiving enhanced residential care" shall mean residing in a privately operated school for individuals with developmental disabilities which is certified by the office for people with developmental disabilities of the department of mental hygiene, in accordance with applicable provisions of law and regulations or an adult home, or enriched housing program certified by the department of health in accordance with applicable law, rules and regulations to the extent permitted by federal law and regulations.

4. An eligible individual or an eligible couple shall be entitled to receive monthly an additional state payment in an amount equal to the difference between the monthly standard of need applicable to such individual or couple and the sum of such individual's or couple's supplemental security income benefit plus countable income.

5. If necessary in order to comply with or reflect changes in federal law, or to take full advantage of available federal funding for the purposes of this title, or to remain qualified for federal funding under any other program, the department may, by regulation, with the approval of the director of the budget, change the amounts specified as the standard of need in subdivision two of this section, or provide that any portion of the supplemental security income benefit be disregarded in determining the amount of the additional state payment. Any such change in the amounts of the standards of need or in the amounts to be so disregarded shall remain effective only until the first day of July of the year next succeeding the year in which such change is to take effect, unless such change is enacted into law prior to such date.

6. (a) As applicable federal law, rules and regulations so provide, a recipient of supplemental security income benefits or medical assistance

in the state of New York or any other state may establish an irrevocable trust fund for the exclusive purpose of their or a family member's funeral and burial. Such trust fund and any accumulated interest not withdrawn by the recipient shall remain the responsibility of the funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made to administer for funeral and burial expenses of the recipient. Those persons who establish such a trust fund shall be given the opportunity to select the funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made of their choice to provide for their or a family member's burial arrangements and to change such selection at any time to any funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made, located either in the state of New York or any other state. Any such change of funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation to whom such payment is made, must be carried out within ten business days following receipt of a request by the purchaser to the funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation to whom such payment is made with which the current trust fund was established. Funds in such trust fund shall be placed in an interest bearing account pursuant to section four hundred fifty-three of the general business law. Accumulated interest from such account shall not be reported as "countable income" pursuant to section two hundred eight of this title.

(b) An applicant for or a recipient of medical assistance in the state of New York or any other state who enters into an agreement pursuant to section four hundred fifty-three of the general business law for their own benefit or for the benefit of a family member shall establish a single irrevocable trust fund for each such beneficiary pursuant to paragraph (a) of this subdivision.

(c) A funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation which makes an agreement for and accepts payment for such an irrevocable trust fund, shall comply with the provisions of section four hundred fifty-three of the general business law, and shall include the following statement in any such agreement in conspicuous print of at least twelve point type:

DISCLOSURE

NEW YORK LAW REQUIRES THIS AGREEMENT TO BE IRREVOCABLE FOR APPLICANTS FOR AND RECIPIENTS OF SUPPLEMENTAL SECURITY BENEFITS UNDER SECTION TWO HUNDRED NINE OF THE SOCIAL SERVICES LAW OR OF MEDICAL ASSISTANCE UNDER SECTION THREE HUNDRED SIXTY-SIX OF THE SOCIAL SERVICES LAW, AND FOR THE MONEYS PUT INTO A TRUST UNDER THIS AGREEMENT TO BE USED ONLY FOR FUNERAL AND BURIAL EXPENSES. WHETHER THIS AGREEMENT IS FOR YOUR FUNERAL AND BURIAL EXPENSES OR FOR THOSE OF A FAMILY MEMBER, IF ANY MONEY IS LEFT OVER AFTER YOUR FUNERAL AND BURIAL EXPENSES HAVE BEEN PAID, IT WILL GO TO THE COUNTY. YOU MAY CHANGE YOUR CHOICE OF FUNERAL HOME AT ANY TIME. IF THIS AGREEMENT IS FOR THE FUNERAL AND BURIAL EXPENSES OF A FAMILY MEMBER, AFTER YOUR DEATH SUCH FAMILY MEMBER MAY CHANGE THE CHOICE OF FUNERAL HOME AT ANY TIME.

(d) Any promotional literature prepared after January first, nineteen hundred ninety-seven by a funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation for prearranged funeral and burial services must contain language disclosing the irrevocable nature of burial trusts established by or for an applicant or recipient of supplemental security income benefits or medical assistance.

§ 210. Mandatory minimum state supplementation. 1. Any inconsistent provisions of this title or any other law notwithstanding, but subject to the provisions of subdivisions two and three of this section, an individual who is deemed to have met the eligibility criteria for additional state payments pursuant to paragraph (c) of subdivision one of section two hundred nine of this title, shall be entitled to receive for each month after December, nineteen hundred seventy-three an additional state payment in an amount which, when added to the supplemental security income benefit and other countable income, is equal to such individual's December, nineteen hundred seventy-three cash grant of assistance under the state's program of old age assistance, assistance to the blind, aid to the disabled or the combined program of aid to aged, blind and disabled persons, plus income not excluded under such state program, plus an amount equal to the January, nineteen

hundred seventy-two bonus value of food stamps as determined in accordance with the regulations of the office of temporary and disability assistance plus, for any month after June, nineteen hundred seventy-five, an amount reflecting the federal supplemental security increases resulting from July first, nineteen hundred seventy-five cost of living increases in such benefits, plus for any month after June, nineteen hundred eighty-two, an amount equal to the July first, nineteen hundred eighty-two federal supplemental security income cost of living adjustment, providing such individual was eligible to receive a mandatory state supplement for the month of December, nineteen hundred eighty-one, plus for any month after June, nineteen hundred eighty-three, an amount equal to \$17.70 for individuals, \$26.55 for couples who are living alone or living with others and \$35.40 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred eighty-three, an amount equal to \$9.70 for individuals, \$15.60 for couples who are living alone or living with others and \$19.40 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred eighty-four, an amount equal to \$11.00 for individuals, \$16.00 for couples who are living alone or living with others and \$22.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred eighty-five, an amount equal to \$11.00 for individuals, \$16.00 for couples who are living alone or living with others and \$22.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred eighty-six an amount equal to \$4.00 for individuals, \$6.00 for couples who are living alone or living with others and \$8.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred eighty-seven an amount equal to \$14.00 for individuals, \$22.00 for couples who are living alone or living with others and \$28.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred

eighty-eight an amount equal to \$14.00 for individuals, \$21.00 for couples who are living alone or living with others and \$28.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any other month after December, nineteen hundred eighty-nine an amount equal to \$18.00 for individuals, \$27.00 for couples who are living alone or living with others and \$36.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred ninety an amount equal to \$21.00 for individuals, \$31.00 for couples who are living alone or living with others and \$42.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred ninety-one an amount equal to \$15.00 for individuals, \$23.00 for couples who are living alone or living with others and \$30.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred ninety-two, an amount equal to \$12.00 for individuals, \$19.00 for couples who are living alone or living with others and \$24.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred ninety-three an amount equal to \$12.00 for individuals, \$17.00 for couples who are living alone or living with others and \$24.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred ninety-four an amount equal to \$12.00 for individuals, \$18.00 for couples who are living alone or living with others and \$24.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred ninety-five an amount equal to \$12.00 for individuals, \$18.00 for couples who are living alone or living with others and \$24.00 for couples receiving family care, residential care or care in schools for individuals with developmental disabilities, plus for any month after December, nineteen hundred ninety-six, an amount equal to \$14.00 for individuals and \$21.00 for couples plus for any month after December, nineteen hundred ninety-seven an amount equal to

\$10.00 for individuals and \$15.00 for couples plus for any month after December, nineteen hundred ninety-eight an amount equal to \$6.00 for individuals and \$11.00 for couples plus for any month after December, nineteen hundred ninety-nine an amount equal to \$13.00 for individuals and \$18.00 for couples plus for any month after December, two thousand an amount equal to \$18.00 for individuals and \$27.00 for couples plus for any month after December, two thousand one an amount equal to \$15.00 for individuals and \$21.00 for couples plus for any month after December, two thousand two an amount equal to \$7.00 for individuals and \$12.00 for couples plus for any month after December, two thousand three an amount equal to \$12.00 for individuals and \$17.00 for couples plus for any month after December, two thousand four an amount equal to \$15.00 for individuals and \$23.00 for couples plus for any month after December, two thousand five an amount equal to \$24.00 for individuals and \$35.00 for couples plus for any month after December, two thousand six an amount equal to the amount of any increases in federal supplemental security income benefits for individuals or couples pursuant to section 1617 of the Social Security Act (42 USC § 1382f) which become effective on or after January first, two thousand seven.

2. An individual who is entitled to receive the minimum state supplement in accordance with subdivision one of this section shall remain entitled to receive such supplement for each month after December, nineteen hundred seventy-three until the month in which such individual dies or ceases to be eligible therefor, pursuant to paragraph (c) of subdivision one of section two hundred nine of this title; provided, however, that no individual shall be entitled to receive such supplement for any month in which such individual is ineligible to receive federal supplemental security income benefits for reasons specified in paragraph (d) of subdivision one of section two hundred nine of this title.

3. If the amount of an individual's December, nineteen hundred seventy-three grant included or was determined on the basis of a special need or special circumstance of such individual which existed in December, nineteen hundred seventy-three, and which need or circumstance during any month after December, nineteen hundred seventy-three ceased

to exist, such individual's minimum state supplement shall be reduced for such month and each month thereafter by an amount equal to the amount such individual's December, nineteen hundred seventy-three grant would have been reduced had such special need or special circumstance not existed in December, nineteen hundred seventy-three. If the amount of an individual's December, nineteen hundred seventy-three grant included an amount to reflect the needs of a person whose presence in the household was essential to the well-being of the individual, the income and resources of such person shall be included as the income and resources of the individual.

§ 211. Agreements for federal administration. 1. The department is hereby authorized, on behalf of the state, to enter into an agreement with the secretary of the federal department of health, education and welfare whereby the secretary agrees to administer the state's program of additional state payments, including determining the eligibility of individuals and couples for such payments.

2. Any such agreement may authorize the secretary to make additional state payments on behalf of the state to persons found eligible for such payments pursuant to the provisions of this title, in amounts authorized by the provisions of this title, and shall contain conditions of eligibility for such additional state payments, including the requirement of current residence and amounts of earned or unearned income to be disregarded in determining eligibility, in accordance with the provisions of this title, regulations of the department and federal law and regulations.

3. Any such agreement shall provide that the state will pay to the secretary: (a) the amount the secretary expends for additional state payments without regard to the secretary's cost of administering such payments, which amount shall not exceed the amount of expenditures made by the state and by social services districts for aid to aged, blind and disabled persons during the calendar year nineteen hundred seventy-two, less any federal funds properly received on account thereof; and (b) the amount the secretary expends for additional state payments for any

individual which are in excess of the difference between the adjusted payment level under the state's program of old age assistance, assistance to the blind or aid to the disabled in January, nineteen hundred seventy-two and the amount of such individual's supplemental security income benefit. For purposes of this subdivision, "adjusted payment level" shall mean the amount of the cash grant under the appropriate state program of old age assistance, assistance to the blind, aid to the disabled or the combined program of aid to aged, blind and disabled persons, to individuals receiving grants under any such program, who had no other income, for the month of January, nineteen hundred seventy-two, plus an amount not greater than the bonus value of food stamps allotted to such individuals in such month, so long as federal law and regulations permit the inclusion of such amount.

4. The department is authorized on behalf of the state, with the approval of the director of the budget, to agree to modification of the agreement, or to terminate the agreement, if it is fiscally advantageous to the state to so act. Any modification of the agreement which is contrary to the provisions of this title shall be effective only until the first day of July of the year next succeeding the year in which such modification is to take effect, unless the substance of such modification is enacted into law prior to such date. For the purposes of section one hundred one-a of the executive law, any such modification or termination of the agreement shall be considered the adoption of a rule, as defined in such section.

5. The department is authorized, on behalf of the state, to enter into an agreement with the secretary of the federal department of health and human services for the purpose of obtaining reimbursement for safety net assistance or any other payments made from state or local funds furnished for basic needs for any month to or on behalf of persons who subsequently are determined eligible to receive supplemental security income payments for such month. Notwithstanding any law to the contrary, the department is authorized to condition eligibility for any program providing such payments upon the individual's execution of a written authorization allowing the secretary of the federal department of health and human services to pay to the social services district the amount of

supplemental security income due at the time the individual becomes eligible.

§ 212. Responsibility; financing. 1. If there is no agreement in effect for federal administration of additional state payments pursuant to section two hundred eleven of this title, the commissioner of the office of temporary and disability assistance shall be responsible for providing such payments to eligible residents of the state as required by this title and shall:

(a) accept and process applications for additional state payments to be made pursuant to this title;

(b) determine eligibility for and the amount of additional state payments in accordance with this title;

(c) redetermine eligibility periodically as the office may require; provided, however, that any such redeterminations shall be no more frequent than provided by the applicable regulations of the United States social security administration; and

(d) take all other actions necessary to effectuate the provisions of this title.

2. If there is in effect an agreement for the federal administration of additional state payments, the state shall be responsible for paying to the secretary an amount equal to: (a) the amount expended under the state's programs of old age assistance, assistance to the blind and aid to the disabled during the calendar year, nineteen hundred seventy-two, less any federal funds properly received on account of such expenditures; plus (b) any amounts in addition to such sum as may be required by the agreement.

TITLE 7

SERVICES FOR THE AGED, BLIND OR DISABLED

Section 250. Declaration of object; definitions.

251. Federal aid; state plan.

252. Responsibility.

253. Application for services.

- 254. Eligibility.
- 255. Character and adequacy of services.
- 256. Investigation of applications.
- 257. Supervision; regulations.
- 258. Quarterly estimates; state reimbursement.
- 259. Application of other provisions.

§ 250. Declaration of object; definitions. 1. In order for the state to receive federal aid under title six of the federal social security act, rehabilitation and other services shall be furnished in accordance with the provisions of this title to help needy persons who are sixty-five years of age or older, are blind, or are disabled to attain or retain capability for self-support or self-care or to prevent or reduce dependency.

2. When used in this title, services shall be construed to include, but not be limited to, protective services, health-related services, self-support services for the handicapped, homemaker services, housekeeping services, special services for the blind, housing improvement and assistance services, home delivered meals, home management and other functional educational services, services to adults requiring care in suitable substitute homes, family planning services and such other services as may be necessary to accomplish the purposes of this title.

§ 251. Federal aid; state plan. 1. The department shall submit the plan required by title six of the federal social security act to the department of health, education and welfare for approval pursuant to such title and act, so that the state may receive federal aid under such title. The department shall act for the state in any negotiations relative to the submission and approval of such plan and may make any arrangement not inconsistent with law which may be required by the federal social security act to obtain and retain such approval and to secure for the state the benefits of the provisions of such title. The department shall make such regulations not inconsistent with law as may

be necessary to make such plan conform to the provisions of such title and any rules and regulations adopted pursuant thereto. The department shall make reports to such federal department in the form and nature required by it and in all respects comply with any request or direction of such federal department which may be necessary to assure the correctness and verification of such reports.

2. The department of taxation and finance shall accept and receive any and all grants of money awarded to the state under title six of the social security act for federal aid for services for the aged, blind or disabled. All monies so received shall be deposited by the department of taxation and finance in a special fund or funds and shall be used by the state exclusively for services for the aged, blind or disabled and the administration thereof under the provisions of this title. Such money shall be paid from such fund or funds on audit and warrant of the comptroller on vouchers of or certification by the commissioner.

§ 252. Responsibility. 1. Except as provided in subdivision two of this section or any other provisions of this chapter, each social services district shall furnish services to the persons eligible therefor who reside in its territory, subject to reimbursement by the state in accordance with the provisions of this chapter, and to supervision by the department.

2. (a) If the state's plan makes provision for services to be provided to eligible persons cared for in certain state institutions or facilities, the department, or other appropriate state department or agency acting pursuant to an agreement with the department, shall furnish services to such persons.

(b) There shall be such cooperative arrangements, between and among the department, and the state departments of health, mental hygiene, education and other appropriate state departments and agencies as shall be necessary to assure that there will be compliance with federal law and regulation and that the objectives of this title will be effectively accomplished.

(c) Services for the aged, blind or disabled persons shall be

administered uniformly throughout the state, except when otherwise required or permitted by the department which shall first obtain the approval of the secretary of health, education and welfare.

§ 253. Application for services. 1. A person requesting services for the aged, blind or disabled may make his application therefor in person or through another in his behalf to the social services official of the county or city in which the applicant resides or is found.

2. Applications by or on behalf of persons under care in institutions or facilities operated by the state shall be made to the department or its agent, except as otherwise permitted or required by regulations of the department.

§ 254. Eligibility. Services for the aged, blind or disabled shall be provided any aged, blind or disabled person who requires such services; who is a resident of the state on the date of application and who is receiving or is an applicant for benefits under the supplemental security income and additional state payments for the aged, blind and disabled program or is receiving or an applicant for authorized payments to aged, blind or disabled individuals ineligible for such program.

§ 255. Character and adequacy of services. 1. It shall be the duty of social services officials, insofar as funds are available for that purpose, to provide adequately for services for the aged, blind or disabled in accordance with the provisions of this title and other applicable provisions of law. Local funds need not be made available in excess of the amount necessary to equal state funds made available to such district or limited pursuant to law.

2. The amount and nature of the services and the manner of providing them, shall be determined by the social services officials with due regard to the conditions existing in each case, and in accordance with the regulations of the department.

3. Services which may be provided to persons who are under care in private or public institutions or facilities shall be furnished only in such institutions and facilities as are operated in compliance with applicable provisions of this chapter or other laws.

4. Services under this title shall not include any which are required to be furnished as medical assistance pursuant to title eleven of article five.

5. Local social services districts shall be authorized, with the approval of the department, to station local social services employees at federal social security offices for the purpose of providing information and referral services relating to emergency assistance for adults and social services to eligible persons.

§ 256. Investigation of applications. Whenever an application for services is made, an investigation and record shall be promptly made of the circumstances of the applicant in accordance with regulations of the department. The object of such investigation shall be to ascertain the facts supporting the application and to obtain such other information as may be required by the department.

§ 257. Supervision; regulations. The department shall: 1. supervise the administration of services for the aged, blind or disabled by social services officials;

2. Make regulations necessary for the carrying out of this title to the end that services for the aged, blind or disabled may be administered uniformly throughout the state, except when otherwise required or permitted by the department with the approval of the secretary of health, education and welfare.

§ 258. Quarterly estimates; state reimbursement. 1. In accordance with

regulations of the department, each social services district shall submit to the department quarterly estimates of its anticipated expenditures for services for the aged, blind or disabled.

2. Expenditures made by social services districts for services under this title shall be subject to reimbursement by the state in accordance with and to the extent authorized by section one hundred fifty-three, and any applicable provisions of law which limit reimbursement for social services or authorize the allocation of funds for such services among the districts.

§ 259. Application of other provisions. 1. Provisions of this chapter and other laws relating to public assistance and care not inconsistent with this title shall be applied in carrying out the provisions of this title.

2. The provisions of any city charter or other local or special act which are inconsistent with the provisions of this title shall not be applicable to the services provided by this title, nor impair nor limit the statewide operation of this title, according to its terms.

TITLE 8

EMERGENCY ASSISTANCE FOR AGED, BLIND AND DISABLED PERSONS

- Section 300. Declaration of purpose; definitions.
301. Responsibility.
302. Eligibility.
303. Character and adequacy.
- 303-a. Grants of assistance for guide dogs, hearing dogs and service dogs; certain cases.
304. Application; verification.
305. Appeals and hearings.
306. Records and reports.
307. Regulations.
308. Services.
309. Social services official as conservator.

§ 300. Declaration of purpose; definitions. 1. Emergency assistance for aged, blind and disabled persons with emergency needs which, if not met, would endanger the health, safety and welfare of such persons, is hereby declared to be a matter of state concern and a necessity in promoting the public health and welfare, until such time as the federal supplemental security income program is expanded to meet this federal responsibility. It is the purpose of this title to provide such assistance to eligible aged, blind and disabled persons who, in the circumstances specified in this title, have needs that cannot be met by the regular monthly benefit under the federal supplemental security income and additional state payments programs. All efforts should be undertaken by New York state's congressional delegation to secure such expansion of the federal program.

2. As used in this title, "aged, blind and disabled persons" means persons who have been determined to be eligible for or are receiving federal supplemental security income benefits and/or additional state payments.

3. As used in this title, the terms "emergency assistance" and "emergency assistance for aged, blind and disabled persons" mean payments to meet emergency needs specified in section three hundred three, made to or for the benefit of persons found to be eligible therefor, in accordance with this title and the regulations of the department.

4. As used in this title, "supplemental security income benefits" means payments made by the secretary of the federal department of health, education and welfare to aged, blind and disabled persons pursuant to title sixteen of the social security act.

5. As used in this title, "additional state payments" means payments by social services districts or by the secretary of the federal department of health, education and welfare on behalf of the state, to aged, blind and disabled persons who are receiving, or who would but for

their income be eligible to receive, federal supplemental security income benefits, made pursuant to title sixteen of the federal social security act, public law 93-66, and the provisions of this chapter.

§ 301. Responsibility. 1. Subject to reimbursement by the state, in accordance with the provisions of this title and regulations of the department, each social services district shall furnish emergency assistance to aged, blind and disabled persons eligible therefor who reside in such district.

2. Expenditures properly made by social services districts under this title, including costs of administration, shall be reimbursed by the state in an amount equal to one-half of such expenditures, after first deducting any federal funds properly received or to be received on account thereof.

§ 302. Eligibility. Emergency assistance shall be granted to an aged, blind or disabled person who applies for such assistance and who:

(a) Has needs, as specified in section three hundred three of this chapter and the regulations of the department, that cannot be met by the regular monthly supplemental security income benefit and/or additional state payment, or by income or resources not excluded by the federal social security act and which, if not met, would endanger the health, welfare or safety of the individual; and

(b) Is not eligible for assistance under section three hundred fifty-j of this chapter.

§ 303. Character and adequacy. 1. It shall be the duty of the social services official to provide emergency assistance, in accordance with regulations of the department, to an eligible aged, blind or disabled person who has one or more of the following needs:

(a) Replacement or repair, as the case may be, of clothing, furniture, food, fuel and shelter; (including repairs to homes owned by aged, blind, and disabled persons and temporary shelter until necessary

repairs are completed or replacement shelter is secured), provided such clothing, furniture, food, fuel or shelter was lost or rendered useless as a result of burglary, theft or vandalism, or as a result of fire, flood or other similar catastrophe which could not have been foreseen by such person, and was not under his control. All such losses shall have been reported to and appropriately verified by local officials before such replacement or repair;

(b) Replacement of stolen cash if reported to and appropriately verified by local officials;

(c) Replacement of lost or mismanaged cash by a person who by reason of advanced age, illness, infirmity, mental weakness, physical handicap, intemperance, addiction to drugs, or other cause, has suffered substantial impairment of his ability to care for his property;

(d) Payments to a secured party in whose favor there is a security interest, pursuant to the provisions of article nine of the uniform commercial code, on furniture or household equipment essential to making living accommodations habitable, in an amount not to exceed the cost of replacement. Such payments shall be authorized only after every effort has been made by the social services official to defer, cancel, reduce or compromise payments on such security interests;

(e) Household moving expenses when a change of residence is necessary because the health, welfare or safety of the eligible person or persons is endangered and such move is not caused by eviction for nonpayment of rent, or when such move will substantially reduce rental costs;

(f) Furniture or clothing which may be necessary in order to enable such person to move to a private residence from a nursing home, hospital or other institution;

(g) Household expenses essential to the maintenance of a home, in the case of a person whose supplemental security income benefit has been reduced because he has been placed in a medical facility. Within forty-five days following placement in such a facility, the social services official shall determine whether, and payments under this subdivision shall not continue unless, such person is expected to remain in such a facility for less than one hundred eighty days following the reduction in such benefits;

(h) Repair or replacement of essential household heating, cooking, refrigeration, water supply, personal safety equipment, plumbing and

sanitary equipment;

(i) Security against nonpayment of rent or for damages, as a condition to renting a housing accommodation, as provided in section one hundred forty-three-c of this chapter;

(j) Broker's fees necessary to securing shelter;

(k) Essential storage of furniture and personal belongings during such circumstances as relocation, eviction or temporary shelter and for so long as the circumstances necessitating the storage continue to exist and provided that eligibility for emergency assistance continues;

(l) Household expenses (including rent, fuel for heating, gas and electric utilities) incurred during the four month period prior to the month in which such person initially applied for supplemental security income benefits or additional state payments, when payment of such household expenses is necessary to prevent eviction or a utility shut-off or to restore such utility services, and, in the judgment of a social services official, other housing accommodations appropriate for such person's best interests are not available in a particular area.

(m) Household expenses (including rent, fuel for heating, gas and electric utilities) incurred during the four month period immediately prior to the month in which such person applied for emergency assistance for adults when payment of such household expenses is necessary to prevent eviction or a utility shutoff or to restore such utility services and, in the judgment of a social services official, other housing accommodations appropriate for such person's best interests are not available in a particular area. A social services official shall not grant emergency assistance under this paragraph if a person has received a grant under this paragraph within the preceding twelve months, unless the granting of such assistance is recommended by the social services official and has been approved by a duly designated official of the department. For purposes of this paragraph, a person shall be deemed to have received a grant under this paragraph within the preceding twelve months if he is residing in a household with another person who has received a grant under this paragraph within the preceding twelve months.

(n) Replacement of so much of a person's lost, stolen or unreceived federal supplemental security income and/or additional state payments check or checks up to a maximum of one-half the amount of each such

check, predicated upon the estimated period of time required for the receipt of the original check or replacement check. Such person shall be required, as a condition of eligibility for such emergency assistance, to agree in writing to repay any amount granted as emergency assistance pursuant to this paragraph and paragraph (o) hereof for which he subsequently receives the original or replacement check of supplemental security income payment and/or additional state payments. All such incidences of loss, theft or non-receipt shall have been reported to and appropriately verified by local officials before such replacement.

(o) Assistance by monetary payment or food voucher, as determined by the social services official, in an amount necessary to meet a person's nutritional requirements for a period of not more than one week, pursuant to regulations of the department for applicants for supplemental security income and/or additional state payments or for emergency assistance pursuant to paragraph (n) of this subdivision. Such assistance shall be provided within twenty-four hours of application where the applicant demonstrates that he requires such assistance to avoid hunger and has no cash or personal assets readily reducible to cash with which to purchase food.

2. The maximum grant available for any emergency need specified in subdivision one above shall be limited to the amount and paid in the manner as specified by regulations of the department.

§ 303-a. Grants of assistance for guide dogs, hearing dogs and service dogs; certain cases. 1. It shall be the duty of the social services official to provide assistance, in accordance with regulations of the department, to a person with a disability using a guide dog, hearing dog or service dog who has been determined to be eligible for or is receiving federal supplemental security income benefits and/or additional state payments, for the purchase of food for such dog.

2. Such regulations of the department shall fix an amount of not less than thirty-five dollars a month, and the method and frequency of distribution and procedures for the determination and periodical redetermination of eligibility for such assistance.

3. Such assistance shall not be granted to any person for whom earned income has been exempted for such purpose pursuant to federal law or regulation.

4. The full amount properly expended by social services districts under this section, including costs of administration, shall be reimbursed by the state, notwithstanding any inconsistent provision of section three hundred one of this chapter.

§ 304. Application; verification. 1. A person requesting emergency assistance under this title shall make his application therefor in person or through another on his behalf, on such form and in such manner as the department may by regulation require, to the social services official in the county in which the applicant resides.

2. Whenever such application is made, an investigation and record shall be promptly made of the circumstances of the applicant in accordance with the regulations of the department to ascertain the facts supporting the application and to obtain such other information as may be required by the department.

3. The social services official shall require that a person applying for or receiving emergency assistance under this title or his duly designated representative be interviewed personally at a time and in a manner provided by the regulations of the department.

§ 305. Appeals and hearings. If an application for assistance under this title is not promptly acted upon or is denied or the assistance granted is deemed inadequate by the applicant or recipient, he may appeal to the department in accordance with the provisions of section twenty-two of this chapter. In scheduling investigations, local social services districts shall give priority to applications for assistance under this title.

§ 306. Records and reports. Each social services official shall keep such records and make such reports to the department at such times and in such manner as may be required by department regulations.

§ 307. Regulations. The department shall promulgate such regulations as are deemed necessary to implement the provisions of this title.

§ 308. Services. An application for emergency assistance under this title shall be deemed an application for services pursuant to section two hundred fifty-three of this chapter, and services shall be provided according to the person's eligibility therefor in accordance with title seven of article five of this chapter.

§ 309. Social services official as conservator. In appropriate cases, a social services official shall initiate a special proceeding for the appointment of a conservator pursuant to section 77.03 of the mental hygiene law.

TITLE 9-A

EQUIPMENT LOAN FUND FOR THE DISABLED

Section 326-a. Title.

326-b. Fund established; participation; other provisions.

§ 326-a. Title. This article shall be known and cited as the "Equipment Loan Fund for the Disabled".

§ 326-b. Fund established; participation; other provisions. 1. There is hereby established in the joint custody of the commissioner and the comptroller the equipment loan fund for the disabled.

2. Participation in the loan of the monies of the fund shall be available to all disabled persons on the basis of need, pursuant to regulations of the commissioner.

3. The loan fund shall provide the disabled with the financial opportunity to purchase or replace essential equipment used by them for daily living or vocational functioning following rehabilitation, including, but not limited to, prosthesis, ramps, wheelchairs, wheelchair van lifts, telecommunication devices for the deaf and hard of hearing, devices which allow persons who are blind or visually impaired to discern printed materials and adaptive equipment to permit a disabled person to operate a motor vehicle but not to purchase or replace a motor vehicle itself.

4. Loans shall be made available directly to the disabled person, the parent, legal guardian, or individual with whom such disabled person resides.

5. Where any equipment purchase is approved by the department, a loan shall be made in an amount not to exceed four thousand dollars per applicant.

6. The commissioner shall establish regulations governing payment of interest, repayment periods, certification and approval of purchase, and such other orders, rules and regulations as may be necessary for interpretations, implementation or administration of this article.

7. During the first three years of operation of the fund, the department shall submit to the governor and legislature annually a summary report setting forth such information as the department deems relevant to monitor and evaluate the progress of the fund.

8. The fund shall consist of all monies appropriated for the purpose of such fund, all monies transferred to such fund pursuant to law, all monies required by the provisions of this section or any other law to be paid into or credited to this fund, and all monies, including interest, paid by borrowers to the fund in repayment of loans made from the fund.

9. Monies of the fund following appropriations made by the legislature and allocation by the director of the budget to the fund, shall be available solely for the purpose of enabling eligible applicants to borrow money at less than the prevailing rates of interest for comparable loans.

10. When used in this article, the term "disabled" shall mean a person having a disability as so defined in section two hundred ninety-two of the executive law.

TITLE 9-B

PUBLIC ASSISTANCE EMPLOYMENT PROGRAMS

- Section 330. Definitions.
- 331. Policies and purposes.
 - 332. Participation and exemptions.
 - 332-a. Supportive services.
 - 332-b. Disability program.
 - 333. Local plans and requirements.
 - 334. Orientation.
 - 335. Assessments and employability plans for certain recipients in households with dependent children.
 - 335-a. Assessments and employability plans for certain recipients in households without dependent children.
 - 335-b. Mandatory work requirements.
 - 335-c. Pilot programs.
 - 336. Work activities.
 - 336-a. Educational activities.
 - 336-c. Work experience.
 - 336-d. Job search activities.
 - 336-e. Subsidized public sector employment programs.
 - 336-f. Subsidized private sector and not-for-profit employment programs.
 - 337. Responsibilities of state departments and agencies.
 - 338. Cooperation of state departments.
 - 339. Reports.

- 340. Technical assistance.
- 341. Conciliation; refusal to participate.
- 341-a. Re-engagement; conciliation; refusal to participate.
- 342. Noncompliance with the requirements of this title.
- 342-a. Noncompliance with the requirements of this title.

§ 330. Definitions. 1. Whenever used in this title:

a. the term "commissioner" means the commissioner of the state office of temporary and disability assistance; and

b. the term "department" means the state office of temporary and disability assistance.

2. "Net loss of cash income" shall mean the amount by which a family's gross income less any necessary work-related expenses is less than the cash assistance the individual was receiving at the time of receiving an offer of employment. Gross income includes, but is not limited to, earnings, unearned income and cash assistance.

3. "Child care" shall refer to any lawful form of care of a child, as defined by federal and state law and regulation, for less than twenty-four hours per day.

4. "Participant" shall mean an applicant for or recipient of public assistance who volunteers for or is required to participate in work activities as provided in this title.

5. Notwithstanding any other provision of this chapter or the labor law, recipients of public assistance who are required to participate in community service or work experience activities authorized pursuant to this title shall be included within the meaning of the term "public employee" for the purposes of applying section twenty-seven-a of the labor law while engaged in community service or work experience programs under this title. In addition, such recipients shall be provided appropriate workers' compensation or equivalent protection for

on-the-job injuries and tort claims protection on the same basis, but not necessarily at the same benefit level, as they are provided to other persons in the same or similar positions, while participating in community service or work experience activities under this title.

§ 331. Policies and purposes. 1. It is hereby declared to be the policy of the state that there be programs under which individuals receiving public assistance will be furnished work activities and employment opportunities, and necessary services in order to secure unsubsidized employment that will assist participants to achieve economic independence. Such programs shall be established and operated in accordance with the provisions of this title and in compliance with federal and state law and regulations.

2. A social services district may contract or establish agreements with entities which comply with the standards to be established in regulations by the commissioner to provide work activities, including but not limited to, job training partnership act agencies, state agencies, school districts, boards of cooperative educational services, not-for-profit community based organizations, licensed trade schools or registered business schools, libraries, post-secondary educational institutions consistent with this title, and educational opportunity centers and local employers. A district shall, to the extent practicable and permitted under federal requirements, develop performance based contracts or agreements with such entities. Such standards shall include an evaluation procedure to ensure that services offered by a provider are sufficient to enhance substantially a participant's opportunity to secure unsubsidized employment or, when coupled with or provided in conjunction with other activities, represent part of a comprehensive approach to enabling a participant to secure unsubsidized employment. Notwithstanding the provisions of section one hundred fifty-three of this article, expenditures pursuant to contracts or agreements with providers who do not meet the standards for approval of providers as defined in regulations will not be eligible for reimbursement by the department.

3. No social services district shall, in the exercising of the powers and duties established in this title, permit discrimination on the basis of race, color, national origin, sex, religion or handicap, in the selection of participants, their assignment or reassignment to work activities and duties, and the separate use of facilities or other treatment of participants.

§ 332. Participation and exemptions. 1. In accordance with federal requirements and this title an applicant for or a recipient of public assistance shall not be required to participate in work activities if such individual is determined by the social services district to be exempt because he or she is:

(a) a person who is ill, incapacitated or sixty years of age or older or deemed to be disabled pursuant to section three hundred thirty-two-b of this title;

(b) a child who is under sixteen years of age or under the age of nineteen and attending fulltime a secondary, vocational or technical school;

(c) a person whose full-time presence in the home is required because of the illness or incapacity of another member of the household;

(d) a parent or other relative of a child who is personally providing care for such child under one year of age for a maximum period of twelve months, only three months of which shall be attributable to any one child, except as otherwise extended up to the twelve month period by the social services official;

(e) a woman who is pregnant, beginning thirty days prior to the medically verified date of delivery of her child.

1-a. Applicants for, or recipients of, public assistance who are exempt from work activities pursuant to paragraph (d) or (e) of subdivision one of this section shall be eligible to receive home visiting services that meet the criteria established pursuant to 42 U.S.C. 711, so long as such individual meets all other eligibility criteria established pursuant to the particular home visiting model. The local social services district shall provide information to any applicant or recipient that is interested in receiving such services and

provide assistance in determining the most appropriate model to meet the particular needs of the individual.

2. A local social services official shall:

(a) make diligent efforts to assist a person who needs transportation to get to and from a work activity site in obtaining such transportation. Where lack of transportation is a direct barrier to participation in a work activity, the local district shall make a reasonable effort to assign the individual to an appropriate work activity at a site in closest possible proximity to such individual's residence;

(b) allow and give first consideration to volunteers who have not previously terminated participation in such program without good cause to participate in the program; provided, however, such consideration shall not preclude a district from requiring applicants or recipients to participate prior to consideration for or participation by such volunteers if such recipients or applicants are determined to be in greater need of the services provided pursuant to this title in accordance with criteria established by the district and submitted and approved as part of its local plan which may include, but not be limited to, length of time for which a recipient has been in receipt of public assistance benefits, education, age, health and skills.

(c) in accordance with regulations of the department, inform applicants and recipients of the opportunity to participate voluntarily in work activities at time of application, recertification and contemporaneously with receipt of public assistance benefits on a periodic basis.

3. A social services official may require a participant in work activities to accept a job only if such official ensures that the participant and the family of such participant will experience no net loss of cash income resulting from acceptance of the job as determined under regulations of the department consistent with federal law and regulations. Pursuant to regulations of the department consistent with federal law and regulations, a social services district shall pay a supplement to a participant in the amount of such net loss of cash income that would otherwise occur. Such supplement shall constitute

public assistance only for purposes of payment and reimbursement, and persons in receipt of such supplement shall not for any other purpose be considered to be recipients of public assistance.

§ 332-a. Supportive services. A social services district shall, subject to the availability of federal and state funds, provide such supportive services, including but not limited to transportation, work related expenses, child care for children up to age thirteen, case management, and medical assistance in accordance with regulations of the department, to enable an individual to participate pursuant to this title. Social services districts may continue such services for persons who lose eligibility for public assistance if funds for the activity are obligated or expended, or for up to ninety days if necessary or appropriate to assist individuals to become self-sufficient. In accordance with paragraph (f) of subdivision five of section one hundred thirty-one-a of this chapter, each district shall guarantee child care to each individual participating in work activities who requires child care to participate in such activities, attending orientation or an assessment in accordance with the requirements of this title. Case management shall be provided for pregnant adolescents, adolescent parents and at-risk youth under eighteen years of age as required by title four-B of article six of this chapter. To the extent that resources permit, case management also shall be provided (in order of priority) to: persons identified in department regulations as at-risk youth, persons in the target populations defined in section three hundred thirty of this title, persons whose employability plan indicates a need for two or more concurrent activities and persons with limited English proficiency.

§ 332-b. Disability program. 1. (a) Upon application and recertification for public assistance benefits, or whenever a district has reason to believe that a physical or mental impairment may prevent the individual from fully engaging in work activities, the social services district shall inquire whether the individual has any medical condition which would limit the individual's ability to participate in

work activities pursuant to this title.

(b) An individual who is eligible to receive comprehensive health services through a special needs plan defined in paragraph (m) or (n) of subdivision one of section three hundred sixty-four-j of this chapter, regardless of whether such a plan is operating in the individual's social services district of residence, shall be considered disabled and unable to engage in work activities or shall be considered work-limited.

2. (a) Under the circumstances set forth in subdivision one of this section, notice shall be provided to the individual of the opportunity to provide, within ten calendar days, any relevant medical documentation, including but not limited to drug prescriptions and reports of the individual's treating health care practitioner, if any; such documentation must contain a specific diagnosis as evidenced by medically appropriate tests or evaluations and must particularize any work related limitations as a result of any such diagnosis.

(b) If, prior to submitting his or her medical documentation, the individual is referred to a health care practitioner certified by the office of disability determinations of the office of temporary and disability assistance or, if applicable, to the contracted agency or institution by or with which such health care practitioner is employed or affiliated for an examination pursuant to subdivision four of this section, such individual shall make best efforts to bring such documentation to the examination, and in no case shall provide such records to the examining health care practitioner certified by the office of disability determinations or, if applicable, to the contracted agency or institution by or with which such health care practitioner is employed or affiliated later than four business days after such examination; provided that the individual may demonstrate good cause as defined in regulations, for failure to provide such records within the specific time periods.

3. The district may in its sole discretion accept such documentation as sufficient evidence that the individual cannot fully engage in work activities and in such case shall modify work assignments consistent with the findings in such medical documents.

4. In instances where the district determines either that the documentation is insufficient to support an exemption from or limitation on work activities or that further medical evaluation is appropriate, the individual shall be referred to a health care practitioner certified by the Office of Disability Determinations of the Department of Social Services for an examination of such individual's medical condition.

The health care practitioner who performs the examination of the individual shall:

(a) review and consider all records or information provided by the individual or his or her treating health care practitioner that are pertinent to the claimed medical condition;

(b) make a specific diagnosis as evidenced by medically appropriate tests or evaluations in determination of the individual's claimed condition;

(c) render to the individual and the social services district, an opinion, particularizing the presence or absence of the alleged condition; and

(d) In the event that he or she identifies a condition, other than the alleged condition, that may interfere with the individual's ability to fully engage in work activities, the practitioner shall report such condition; and

(e) determine whether the individual is:

(i) disabled and unable to engage in work activities pursuant to this title for a stated period of time, in which case the applicant shall be exempt in accordance with paragraph (a) of subdivision one of section three hundred thirty-two of this title;

(ii) for a stated period of time, not disabled, but work limited, and able to engage in work activities pursuant to this title, with stated limitations, or

(iii) neither disabled nor work limited.

4-a. If the practitioner to whom the individual is referred pursuant to subdivision four or paragraph (b) of subdivision two of this section issues an opinion that differs from the applicant's treating health care practitioner, the practitioner shall provide a written determination that specifies why the practitioner disagrees with the applicant's

treating health care practitioner's disability determination and present evidence that supports the opinion.

5. When an applicant or recipient has requested or a social services official has directed a determination pursuant to this section, no assignment to work activities may be made until completion of such determination, unless the applicant or recipient agrees to a limited work assignment not inconsistent with the medical condition alleged by such person.

6. When an applicant or recipient receives notification of the examining medical professional's disability determination, he or she shall also be notified of his or her right to request a fair hearing within ten days of such notice. If such applicant timely requests a fair hearing, no assignment to work activities pursuant to this title may be made pending such hearing and determination unless the applicant or recipient agrees to a limited work assignment not inconsistent with the medical condition alleged by such person. Provided, however, that if a social services district has reason to believe that such recipient or applicant does not actually suffer from a work limiting condition, the district shall provide the applicant or recipient with notice of potential sanctions pursuant to subdivision three of section three hundred forty-two of this title, and provided further that recipients will be subject to sanctions pursuant to subdivision three of section three hundred forty-two of this title if the district determines, based on clear medical evidence, that there is no basis for the individual's claim that he or she is unable to fully engage in work activities, and that the individual intentionally misrepresented his or her medical condition.

7. Any applicant or recipient determined to be work limited pursuant to this section may be assigned to work activities only in accordance with the limitations and protections set forth in paragraph (e) of subdivision five of section three hundred thirty-five-b of this title.

§ 333. Local plans and requirements. Each social services district

shall submit to the commissioner for approval a biennial plan for the provision of education, work, training and supportive services related to the operation of work activity programs pursuant to this title.

Such plan shall be developed in cooperation and coordination with public and private education institutions, child care providers, child care resource and referral agencies if available in the district, labor unions, libraries, public and private employers, employment and training agencies and organizations, and private industry councils established in service delivery areas defined in subdivision five of section nine hundred seventy-one of the executive law.

Such plan shall be generally available to the public for review and comment for a period of thirty days prior to submission to the commissioner. In accordance with department regulations and consistent with federal law and regulations, such plan shall include, but not be limited to, the following:

1. Estimates of the number of participants to be served;
2. A description of available supportive services as prescribed by section three hundred thirty-two-a of this title;
3. A description of the available activities under this title and the estimated capacity of such activities;
4. A description of the district's plan to meet federal requirements regarding participation and the district's criteria established pursuant to the provisions of paragraph (b) of subdivision two of section three hundred thirty-two of this title;
5. A list of education and training providers, such as job training partnership act agencies, educational agencies and other public agencies or private organizations with which the district expects to enter into agreements or contracts with a description of such contracts;
6. A description of the orientation to be provided to participants

pursuant to section three hundred thirty-four of this title;

7. A description of the assessment tools chosen and the employee qualifications, district administrative unit or contracting entity that will be responsible for the assessments and the development of the employability plans;

8. A description of the conciliation procedures to be made available to participants pursuant to section three hundred forty-one of this title; and

9. Such additional information as is necessary to comply with federal requirements and to provide the report required under section three hundred thirty-nine of this title.

§ 334. Orientation. 1. In accordance with department regulations, a social services district shall, at the time of application or redetermination, in writing and orally inform all public assistance applicants and recipients of the availability of activities and supportive services provided under this title for which they are eligible and of district or participant responsibilities, including:

(a) education, employment and training opportunities available under the local plan, including educational and training opportunities available at no cost to the participant as well as the responsibilities associated with the repayment of student financial aid;

(b) supportive services as prescribed by section three hundred thirty-two-a of this title; child care pursuant to section four hundred ten-u of this chapter for persons whose eligibility for assistance has terminated; and applicable medical assistance;

(c) the obligations of the district regarding the activities and supportive services to be provided;

(d) the rights, responsibilities and obligations of the participant in the program including, but not limited to, participation and the consequences of failure to participate in work activities without good cause;

(e)(1) the types and settings of child care services which may be

reasonably accessible to participants and how such services shall be provided and financed;

(2) the assistance available to help participants select appropriate child care services; and

(3) the assistance available upon request to help participants obtain child care services.

2. A local social services official shall inform applicants for and recipients of public assistance of their responsibility to cooperate in establishing paternity and enforcing child support obligations.

3. Consistent with federal and state law and regulations, a local social services official shall, within one month of the recipient's participation in orientation, notify the recipient in writing of the opportunity to participate in the district's programs established under this title and provide a clear description of how to enter the programs.

§ 335. Assessments and employability plans for certain recipients in households with dependent children. 1. Each social services official shall ensure that each recipient of public assistance who is a member of a household with dependent children and is eighteen years of age or older, or who is sixteen or seventeen years of age and is not attending secondary school and has not completed high school or a high school equivalency program, receives an assessment of employability based on his or her educational level, including literacy and English language proficiency, basic skills proficiency, child care and other supportive services needs; and skills, prior work experience, training and vocational interests. This assessment shall include a review of family circumstances including a review of any special needs of a child and whether home visiting services would be appropriate and beneficial for the family. Such assessment shall be completed within ninety days of the date on which such person is determined eligible for public assistance. An applicant for or recipient of public assistance may be assigned to work activities prior to completion of such assessment.

2. (a) Based on the assessment required by subdivision one of this

section, the social services official, in consultation with the participant, shall develop an employability plan in writing which shall set forth the services that will be provided by the social services official, including but not limited to child care and other services and the activities in which the participant will take part, including child care and other services and shall set forth an employment goal for the participant. To the extent possible, the employability plan shall reflect the preferences of the participant in a manner that is consistent with the results of the participant's assessment and the need of the social services district to meet federal and state work activity participation requirements, and, if such preferences cannot be accommodated, the reasons shall be specified in the employability plan. The employability plan shall also take into account the participant's supportive services needs, available program resources, local employment opportunities, and where the social services official is considering an educational activity assignment for such participant, the participant's liability for student loans, grants and scholarship awards. The employability plan shall be explained to the participant. Any change to the participant's employability plan required by the social services official shall be discussed with the participant and shall be documented in writing.

(b) Where an assessment indicates that a participant who is not subject to the education requirements of subdivision four of section three hundred thirty-six-a of this title has not attained a basic literacy level, the social services official shall encourage and may require the participant to enter a program to achieve basic literacy or high school equivalency or to enter such educational programs in combination with other training activities consistent with the employability plan.

(c) Where an assessment indicates that home visiting services would be appropriate and beneficial to the public assistance household, and such services are available, the local social services official shall encourage the recipient to participate in such services. To the extent that such participant is interested in receiving home visiting services, the local social services official shall assign the participant to a work activity in accordance with paragraph (f) or (m) of subdivision one of section three hundred thirty-six of this title, where such home

visiting services shall count towards the individual's work requirements as set forth in section three hundred thirty-five-b of this title.

3. Each applicant for or recipient of public assistance as described herein must participate in an assessment as required by the social services district in accordance with the conditions of this section. Applicants who fail or refuse to participate with the requirements of this section shall be ineligible for public assistance. Recipients who fail or refuse to participate with the requirements of this section shall be subject to the sanctions set forth in section three hundred forty-two of this title.

4. A local social services official shall, pursuant to department regulations developed in consultation with the department of education, and the department of social services or its successor agencies use designated trained staff or contract with providers having a demonstrated effectiveness in performing assessments and developing employability plans to perform assessments and develop employability plans.

5. A social services district shall assign participants to activities pursuant to their employability plans to the extent that child care is guaranteed and other services as prescribed by section three hundred thirty-two-a of this title and section four hundred ten-u of this chapter are available. The district shall provide information to participants orally and in writing, as appropriate, regarding child care and the methods of payment therefor. Such information shall be sufficient for participants to make an informed decision regarding child care.

6. Nothing in this section shall be construed to prevent a social services official from providing an assessment more detailed or comprehensive than the requirements set forth in this section.

§ 335-a. Assessments and employability plans for certain recipients in households without dependent children. 1. To the extent resources are

available, the social services official shall, within a reasonable period of time not to exceed one year following application and not to the exclusion of the assessment requirements of section three hundred thirty-five of this title, conduct an assessment of employability based on the educational level, including literacy and English language proficiency; basic skills proficiency; supportive services needs; and the skills, prior work experience, training and vocational interests of each participant. This assessment shall include a review of family circumstances.

2. (a) Based on the assessment required by subdivision one of this section, the social services official, in consultation with the participant, shall develop an employability plan in writing which shall set forth the services that will be provided by the social services official and the activities in which the participant will take part, including supportive services and shall set forth an employment goal for the participant. To the extent possible, the employability plan shall reflect the preferences of the participant in a manner that is consistent with the results of the participant's assessment and the need of the social services district to meet federal and state work activity participation requirements, and, if such preferences cannot be accommodated, the reasons shall be specified in the employability plan. The employability plan also shall take into account the participant's supportive services needs, available program resources, local employment opportunities, and where the social services official is considering an educational activity assignment for such participant, the participant's liability for student loans, grants and scholarship awards. The employability plan shall be explained to the participant. Any change to the participant's employability plan required by the social services official shall be discussed with the participant and shall be documented in writing.

(b) Where an assessment indicates that a participant who is not subject to the education requirements of this title has not attained a basic literacy level, the social services official shall encourage and may require the participant to enter a program to achieve basic literacy or high school equivalency or to enter such educational programs in combination with other training activities consistent with the

employability plan.

3. A local social services official shall, pursuant to department regulations developed in consultation with the department of education and the department of social services or its successor agencies, use designated trained staff or contract with providers having a demonstrated effectiveness in performing assessments and developing employability plans to perform assessments and develop employability plans.

4. Each applicant for or recipient of public assistance as described herein must participate in an assessment as required by the social services district in accordance with the conditions of this section. Applicants who fail or refuse to participate with the requirements of this section shall be ineligible for public assistance. Recipients who fail or refuse to participate with the requirements of this section shall be subject to the sanctions set forth in section three hundred forty-two of this title.

5. A social services district shall assign participants to activities pursuant to their employability plans to the extent that supportive services including transportation are available.

6. Nothing in this section shall be construed to prevent a social services official from providing an assessment more detailed or comprehensive than the requirements set forth in this section.

§ 335-b. Mandatory work requirements. 1. Each social services district shall meet or exceed the minimum participation rate for recipients of assistance funded under the federal temporary assistance for needy families program participating in work activities as specified below with respect to families receiving such assistance. Each such district shall also meet or exceed the minimum participation rates for households in which there is an adult who is receiving safety net assistance. Work activities for which such rates apply are described in section three hundred thirty-six of this title.

(a) Such rate for all families receiving assistance funded under the federal temporary assistance for needy families program shall be as follows: for federal fiscal year nineteen hundred ninety-seven, twenty-five percent; nineteen hundred ninety-eight, thirty percent; nineteen hundred ninety-nine, thirty-five percent; two thousand, forty percent; two thousand one, forty-five percent; two thousand two and thereafter, fifty percent. Such rates shall apply unless the state is required to meet a different rate as imposed by the federal government, in which case such different rate shall apply in accordance with a methodology approved by the commissioner of the office of temporary and disability assistance.

(b) Such rate for two-parent families receiving assistance funded under the federal temporary assistance for needy families program shall be as follows: for federal fiscal years nineteen hundred ninety-seven and nineteen hundred ninety-eight, seventy-five percent; nineteen hundred ninety-nine and thereafter, ninety percent. Such rate shall apply unless the state is required to meet a different rate as imposed by the federal government, in which case such different rate shall apply in accordance with a methodology approved by the commissioner of the office of temporary and disability assistance.

(c) Such rate for households with dependent children in which there is an adult or minor head of household and which is receiving safety net assistance shall be fifty percent.

(d) Calculation of participation rates. The commissioner of the office of temporary and disability assistance shall promulgate regulations which define the participation rate calculation. Such calculation for families receiving assistance funded under the federal temporary assistance for needy families program pursuant to article IV-A of the social security act shall be consistent with that established in federal law.

(e) Minimum work hours. In order for individuals to be included in the participation rates specified in this subdivision, such individuals must be engaged in work as defined in title IV-A of the social security act and in this section for a minimum average weekly number of hours as specified below.

(i) For all families, if the month is in federal fiscal year: nineteen hundred ninety-seven and nineteen hundred ninety-eight, twenty hours per

week; nineteen hundred ninety-nine, twenty-five hours per week; two thousand and thereafter, thirty hours per week.

(ii) For two-parent families or households without dependent children, in any federal or state fiscal year, thirty-five hours per week.

(iii) In the case of a two-parent family receiving federally funded child care assistance and a parent in the family is not disabled or caring for a severely disabled child, the individual and the other parent in the family are participating in work activities for a total of at least fifty-five hours per week during the month, not fewer than fifty hours of which are attributable to activities described in paragraphs (a) through (h) and (l) of subdivision one of section three hundred thirty-six of this title.

(f) Such rate for households without dependent children in which there is an adult or minor head of household and which is receiving safety net assistance shall be fifty percent.

2. Engaged in work for a month shall mean participating in work activities identified in subdivision one of section three hundred thirty-six of this title for the required number of hours specified in this section provided, however, that at least twenty hours of such participation, or thirty hours for two-parent families, or fifty hours for two-parent families receiving federally funded child care as set forth in subparagraph (iii) of paragraph (d) of subdivision one of this section, shall be attributable to the activities described in paragraphs (a) through (h) and (l) of subdivision one of section three hundred thirty-six of this title, or for households without dependent children at least twenty hours of participation shall be attributable to the activities set forth in paragraphs (a) through (h) and (l) of subdivision one of section three hundred thirty-six of this title, and further provided that participation in job search and job readiness assistance as identified in paragraph (f) of subdivision one of section three hundred thirty-six of this title shall only be determined as engaged in work for a maximum period of six weeks, only four of which may be consecutive as otherwise limited by federal law; and that individuals in all families and in two parent families may be engaged in work for a month by reason of participation in vocational training to the extent allowed by federal law. Any non-graduate student

participating or approved by CUNY, SUNY or another degree granting institution, or any other state or local district approved education, training or vocational rehabilitation agency to participate in work-study, or in internships, externships, or other work placements that are part of the curriculum of that student, shall not be unreasonably denied the ability to participate in such programs and each hour of participation shall count toward satisfaction of such student's work activity requirements of this title provided that the district may consider, among other factors, (a) whether the student has voluntarily terminated his or her employment or voluntarily reduced his or her earnings to qualify for public assistance pursuant to subdivision ten of section one hundred thirty-one of this article; (b) whether a comparable job or on the job training position can reasonably be expected to exist in the private, public or not-for-profit sector; (c) that the student has a cumulative C average or its equivalent, which may be waived by the district for undue hardship based on (1) the death of a relative of the student, (2) the personal injury or illness of the student, or (3) other extenuating circumstances; and (d) whether the institution cooperates in monitoring students attendance and performance and reports to the local social services department monthly on each student. Failure of the institution to monitor and report monthly to local social services districts on attendance and performance of the student's work study, internship, externship or other work placement shall be cause for the department to reasonably deny the student's ability to participate in such programs. Students shall be subject to sanctions equivalent to those associated with failure to adequately satisfy their other required work activities. In assigning a non-graduate student participating in work-study, internships, externships or other work placements, pursuant to this section, to other work activities the district shall make reasonable effort to assign the student to hours that do not conflict with the student's academic schedule.

3. For purposes of determining monthly participation rates under this section, a recipient in a one parent family who is the only parent or caretaker relative in the family of a child who has not attained six years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least twenty hours per

week during the month.

4. For the purposes of this section, a recipient who is married or a head of household and has not attained twenty years of age and who maintains satisfactory school attendance in accordance with federal requirements shall be deemed to be engaged in work to the extent allowed by federal law and regulations.

5. (a) Each parent or caretaker of a child, when such parent or caretaker is receiving public assistance, must be engaged in work as established by the social services district in accordance with the provisions of its local plan filed pursuant to section three hundred thirty-three of this title.

(b) Each social services official shall ensure that each parent or caretaker of a child, when such parent or caretaker is receiving benefits under the federal temporary assistance for needy families program, is required to be engaged in work as soon as practicable, but no later than twenty-four months (whether or not consecutive) from initial receipt of such assistance.

(c) Each social services official shall ensure that each parent or caretaker of a child, when such parent or caretaker is receiving public assistance, is engaged in work as soon as practicable. Provided, however, that such social services official shall ensure that each parent or caretaker of a child under the age of five is provided with information regarding home visiting programs which meet the criteria established pursuant to 42 U.S.C. 711 in their area, and that such home visiting services may satisfy a portion of such individual's required work activities.

(d) Each social services official shall ensure that each adult member of a household without dependents, when such household is receiving public assistance is engaged in work as soon as practicable.

(e) Notwithstanding any other requirement of this section, individuals in receipt of public assistance and who are work limited in accordance with section three hundred thirty-two-b of this title shall be assigned to work activities in accordance with this title only if such assignment:

(i) is consistent with the individual's treatment plan and is

determined to be appropriate by the social services official who is satisfied that such person is able to perform the work assigned and that such assignment will assist the individual's transition to self-sufficiency. In the event that such assignment is not part of the individual's treatment plan, the individual shall be deemed to be engaged in work as defined in this subsection if he or she is complying with the requirements of his or her treatment plan.

(ii) where no treatment plan exists, is consistent with the individual's mental and physical limitations.

(f) The social services district shall communicate to the person supervising the work assignment of a work limited recipient any limitations of the recipient.

6. Recipients of safety net assistance who are exempt or work limited pursuant to this title shall be determined to be engaged in work as defined by department regulation.

7. Notwithstanding the participation rates set forth in subdivision one of this section, for purposes of receiving the enhanced state reimbursement for administration of income maintenance, food stamps, and employment programs as set forth in subdivision seventeen of section one hundred fifty-three of this article, the district must meet a fifty percent average monthly participation rate for the following categories of households in a fiscal year: households receiving assistance funded under the federal temporary assistance for needy families block grant program in which there is an adult or minor head of household; and households with dependent children in which there is an adult or minor head of household and which is receiving safety net assistance and payment for which is used to meet the federally required maintenance of effort for the temporary assistance for needy families block grant; provided, however, that in the first state fiscal year in which this subdivision shall have become a law, the participation rate shall be calculated by averaging the monthly participation rate for the period from October first, two thousand six to December thirty-first, two thousand six and for the second year, the participation rate shall be calculated by averaging the monthly participation rate for the period from October first, two thousand six to September thirtieth, two

thousand seven, and for each year thereafter, the participation rate shall be calculated by averaging the monthly participation rate for the federal fiscal year.

§ 335-c. Pilot programs. From the funds specifically appropriated therefor the commissioner of the office of temporary and disability assistance in cooperation with the commissioner of the office of children and family services may conduct pilot programs in up to five social services districts to provide intensive employment and other supportive services including job readiness and job placement services to non-custodial parents who are unemployed or who are working less than twenty hours per week; who are recipients of public assistance or whose income does not exceed two hundred percent of the federal poverty level; and who have a child support order payable through the support collection unit as created by section one hundred eleven-h of this chapter or have had paternity established for his or her child and a court proceeding has been initiated to obtain an order of child support, and the custodial or non-custodial parent is receiving child support services through a social services district. Non-custodial parents determined to be eligible for participation in the pilot programs shall be informed of the opportunity to participate in such programs on a voluntary basis. The pilot programs shall have as one component parenting education for the non-custodial parents. Non-custodial parents shall be required to attend such parenting education as a condition of participating in the pilot programs.

§ 336. Work activities. 1. Social services districts may provide, and require applicants for and recipients of public assistance to participate in a variety of activities, including but not limited to the following:

- (a) unsubsidized employment;
- (b) subsidized private sector employment;
- (c) subsidized public sector employment;
- (d) work experience in the public sector or non-profit sector,
(including work associated with refurbishing publicly assisted housing)

if sufficient private sector employment is not available;

(e) On-the-job training;

(f) job search and job readiness assistance, which shall include activities with the goal of seeking or obtaining employment, or preparation to seek or obtain employment, including life-skills training, which shall include but not be limited to home visiting services to the recipient and their family, and provided further that job search is an active and continuing effort to secure employment configured by the local social services official; and such social services district may work in cooperation with the department of labor to provide workforce guidance and information in accordance with section ten-c of the labor law;

(g) community service programs provided, however, the number of hours a participant in community service activities authorized pursuant to this section shall be required to work in such assignment shall not exceed a number which equals the amount of assistance payable with respect to such individual (inclusive of the value of food stamps received by such individual, if any) divided by the higher of (a) the federal minimum wage, or (b) the state minimum wage. No participant shall in any case be required to engage in assigned activities for more than forty hours in any week. No participant shall be assigned to a community service activity that conflicts with his or her bona fide religious beliefs;

(h) vocational educational training as time limited by federal law. For the purposes of this title, "vocational educational training" shall include but not be limited to organized educational programs offering a sequence of courses which are directly related to the preparation of individuals for current or emerging occupations including programs that require up to four years of post-secondary education. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence. Such term also includes applied technology education;

(i) job skills training directly related to employment. Job skills training directly related to employment may include but not be limited to participation in up to four years of post-secondary education to the

extent consistent with federal and state requirements;

(j) education directly related to employment, in the case of a recipient who has not yet received a high school diploma or a certificate of high school equivalency;

(k) satisfactory attendance at secondary school or a course of study leading to a certificate of general equivalency in the case of a recipient who has not completed secondary school or received such certificate;

(l) provision of child care services to an individual who is participating in community service;

(m) job search and job readiness assistance, as defined in paragraph (f) of this subdivision, once the individual has exceeded the six week limit set in federal law;

(n) educational activities pursuant to section three hundred thirty-six-a of this title.

2. No participant shall be required to provide child care services as a work activity described in this section unless the participant expressly requests in writing to provide such services.

3. Social services districts may enter into agreements with public and private employment agencies to assist recipients of public assistance to find jobs.

4. No participant shall in any case be required to engage in assigned activities for more than forty hours in any week.

5. In no event shall the programs and activities enumerated in this title be deemed the sole activities that a social services district may provide and require applicants for and recipients of public assistance to engage in. Any program or activity that meets the goals of this title and is consistent with the requirements of the labor law and this chapter shall be allowed.

6. Any social services district that establishes and provides a program or activity not herein enumerated shall set forth the requirements and structure of such program or activity in its local plan

pursuant to the provisions of section three hundred thirty-three of this title.

7. In accordance with the provisions of paragraph (h) of subdivision two of section four hundred fifty-four of the family court act or as otherwise required by the court, the court may assign to work activities the non-custodial parents of children receiving public assistance and require a report to such court of any failure of said parent to comply with the requirements of such program.

8. The hours of participation in federal work study programs completed pursuant to section three hundred thirty-five-b of this title shall be included as a work activity within the definition of unsubsidized employment, subsidized private sector employment or subsidized public sector employment pursuant to paragraphs (a), (b) and (c) of subdivision one of this section, and the hours of participation in internships, externships and other work placements completed pursuant to section three hundred thirty-five-b of this title shall be included as a work activity within the definition of on-the-job training pursuant to paragraph (e) of subdivision one of this section.

§ 336-a. Educational activities. 1. Social services districts shall make available vocational educational training and educational activities. Such activities may include but need not be limited to, high school education or education designed to prepare a participant for a high school equivalency certificate, basic and remedial education, education in English proficiency, education or a course of instruction in financial literacy and personal finance that includes instruction on household cash management techniques, career advice to obtain a well paying and secure job, using checking and savings accounts, obtaining and utilizing short and long term credit, securing a loan or other long term financing arrangement for high cost items, participation in a higher education course of instruction or trade school, and no more than a total of four years of post-secondary education (or the part-time equivalent). Educational activities pursuant to this section may be offered with any of the following providers which meet the performance

or assessment standards established in regulations by the commissioner for such providers: a community college, licensed trade school, registered business school, or a two-year or four-year college; provided, however, that such post-secondary education must be necessary to the attainment of the participant's individual employment goal as set forth in the employability plan and such goal must relate directly to obtaining useful employment. When making an assignment to any educational activity pursuant to this subdivision, such assignment shall be permitted only to the extent that such assignment is consistent with the individual's assessment and employment plan goals in accordance with sections three hundred thirty-five and three hundred thirty-five-a of this title and shall require that the individual maintains satisfactory academic progress and hourly participation is documented consistent with federal and state requirements. For purposes of this provision "satisfactory academic progress" shall mean having a cumulative C average, or its equivalent, as determined by the academic institution. The requirement to maintain satisfactory academic progress may be waived if done so by the academic institution and the social services district based on undue hardship caused by an event such as a personal injury or illness of the student, the death of a relative of the student or other extenuating circumstances. Participation in an educational and/or vocational training program, that shall include, but not be limited to, a two-year post-secondary degree program, which is necessary for the participant to attain their individual employment goal and is likely to lead to a degree or certification and sustained employment, shall be approved consistent with such individual's assessment and employability plan to the extent that such approval does not jeopardize the state's ability to comply with federal work participation rates, as determined by the office of temporary and disability assistance.

2. When a district contracts with a proprietary vocational school to provide vocational educational training to participants, not more than twenty-five percent of the approved duration of the program shall be devoted to preparation for a high school equivalency diploma or instruction in English for students with limited proficiency in English. Participants needing instruction in basic literacy shall be referred to basic education programs. Instructors employed by proprietary schools to

prepare a participant for a high school equivalency certificate or for education in English proficiency shall meet experience requirements established by the regulations of the commissioner of education.

3. When a participant is assigned to an appropriate vocational educational or educational activity and such activity is available at no cost to the social services district through the school district or board of cooperative educational services in which the participant resides or through another agency or organization providing educational services, the social services district shall refer the participant to such district, board, agency or organization.

4. To the extent provided in paragraphs (a) through (d) of this subdivision and if resources permit, each social services official shall assign to appropriate educational activities any participant who has not obtained a high school diploma or its equivalent:

(a) In accordance with the provisions of this chapter, any such participant who is under age eighteen shall be required to attend educational activities designed to prepare the individual for a high school degree or equivalency certificate. Participants who are not subject to compulsory school attendance requirements may be exempted from the requirements of this paragraph under criteria established by the department in consultation with the state education department and consistent with federal law and regulations.

(b) Any such participant who is age eighteen or nineteen shall be assigned to educational activities, except that the district shall assign such participant to employment and/or other activities under this title if the district has determined that such alternative activities are consistent with the participant's employability plan and, pursuant to department regulations, there has been a determination by the district based on such plan that educational activities are not appropriate for such participant or that the participant has failed to make good progress in such educational activities.

(c) Any such participant who is an adult in a two-parent family and is under age twenty-five may be required to participate in educational activities consistent with his or her employment goals set forth in the employability plan.

(d) The social services official shall not assign a participant described in this subdivision to any activities which interfere with the educational activities assigned pursuant to such participant's employability plan and described in this subdivision.

5. Any applicant for or recipient of public assistance pursuing activities described in this subdivision shall not be assigned to any other activity prior to conducting an assessment and developing an employability plan as prescribed in section three hundred thirty-five or three hundred thirty-five-a of this title. Local social services districts may periodically reevaluate a participant's employment plan and make assignments to other work activities in order to meet participation rates, giving due consideration to the participant's progress in the current, and if applicable, prior program.

6. Nothing required in this section shall be construed to supersede the eligibility requirements of teen parents as set forth in this chapter.

§ 336-c. Work experience. 1. (a) Work experience programs meeting state and federal requirements may be established by social services districts.

(b) Work experience programs may include the performance of work for a federal office or agency, county, city, village or town or for the state or in the operation of or in an activity of a nonprofit agency or institution, in accordance with the regulations of the department.

2. A recipient may be assigned to participate in such work experience program only if:

(a) appropriate federal and state standards of health, safety and other work conditions are maintained;

(b) The number of hours a participant in work experience activities authorized pursuant to this section shall be required to work in such assignment shall not exceed a number which equals the amount of assistance payable with respect to such individual (inclusive of the value of food stamps received by such individual, if any) divided by the

higher of (a) the federal minimum wage provided that such hours shall be limited as set forth in subdivision four of section three hundred thirty-six of this title, or (b) the state minimum wage;

(c) such recipients are provided appropriate workers' compensation or equivalent protection for on-the-job injuries and tort claims protection on the same basis, but not necessarily at the same benefit level, as they are provided to other persons in the same or similar positions, while participating in work experience activities under this section;

(d) the project to which the participant is assigned serves a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, operation of public facilities, public safety, and child day care;

(e) such assignment would not result in (i) the displacement of any currently employed worker or loss of position (including partial displacement such as reduction in the hours of non-overtime work, wages or employment benefits) or result in the impairment of existing contracts for services or collective bargaining agreements; (ii) the employment or assignment of a participant or the filling of a position when any other person is on layoff from the same or any equivalent position or the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant assigned pursuant to this section; (iii) any infringement of the promotional opportunities of any current employed person; or (iv) the performance, by such participant, of a substantial portion of the work ordinarily and actually performed by regular employees; or (v) the loss of a bargaining unit position as a result of work experience participants performing, in part or in whole, the work normally performed by the employee in such position;

(f) such assignment is not at any work site at which the regular employees are on a legal strike against the employer or are being subjected to lock out by the employer.

3. The public employer shall publish on a monthly basis a report summarizing the employer's work experience program for the month. Such monthly report shall include, at a minimum, summary information regarding the agencies or departments where participants are assigned,

work locations, job duties and assignments, hours worked and period worked and shall be provided to the certified collective bargaining representative and may not be disclosed to any other party. Such certified collective bargaining representative shall take reasonable steps to protect the confidentiality of such information and shall take reasonable steps to prevent disclosure of same to non-authorized persons. Every report provided pursuant to this section shall contain a warning against re-disclosure and asserting the confidentiality of the information therein provided.

4. In assigning a recipient who is a non-graduate student attending CUNY, SUNY or other approved non-profit education, training or vocational rehabilitation agency, the social services district must, after consultation with officials of CUNY, SUNY or other non-profit education, training or vocational rehabilitation agency, assign the student to a work site on campus, where the recipient is enrolled, and shall not unreasonably assign the student to hours that conflict with the student's academic schedule, if an approved work experience assignment is available. Where such work experience assignment is not available, the social services district shall, to the extent possible, assign the student to a work site within reasonable proximity to the campus where the recipient is enrolled and shall not unreasonably assign the student to hours that conflict with the student's academic schedule. Provided, however, in order to qualify for a work experience assignment on-campus, or in close proximity to campus, a student must have a cumulative C average, or its equivalent. The district may waive the requirement that the student have a cumulative C average or its equivalent for undue hardship based on: (i) the death of a relative of the student; (ii) the personal injury or illness of the student; or (iii) other extenuating circumstances.

§ 336-d. Job search activities. 1. Each applicant for or recipient of public assistance shall, upon request of the social services official, demonstrate that he or she is engaged in an active and continuing effort to achieve self-sufficiency as defined by the department. Such effort shall include but not be limited to an active and continuing search for

employment, or for persons otherwise exempt in accordance with section three hundred thirty-two of this title, and where deemed appropriate by the social services official, activities that foster preparation for employment. Each such applicant or recipient shall have an affirmative duty to accept any offer of lawful employment in which he or she may engage. The failure of a social services district to assign applicants and recipients to activities pursuant to this title shall not relieve such persons from the requirements of this section. An individual who fails to comply with the requirements of the section shall be subject to the provisions set forth in subdivision five of section one hundred thirty-one of this chapter and of section three hundred forty-one and three hundred forty-two of this title.

2. The social services official shall, if deemed appropriate by such official, supervise job search activities assigned pursuant to this article.

§ 336-e. Subsidized public sector employment programs. 1. A social services district may establish subsidized public sector employment programs for public assistance recipients including, but not limited to, grant diversion programs, which may be supported wholly or in part with public assistance funds. Such programs shall be established through agreements between local districts and employers; provided, however, that, if appropriate, the department may act on behalf of one or more local districts in establishing such agreements.

2. Programs may include, but need not be limited to, on-the-job training programs which reimburse employers for the cost of training public assistance recipients through wage subsidies.

3. The social services official or the department is authorized to transfer public assistance funds to employers through written agreements developed and executed in accordance with department regulations.

4. A recipient may be assigned to a subsidized public sector employment activity only if:

(a) the conditions of employment including such factors as the type of work, geographical region and proficiency of the participant are appropriate and reasonable.

(b) the recipient is deemed an employee for purposes of the applicable collective bargaining and labor laws and receives the same benefits and protections as existing employees similarly situated (working a similar length of time and doing similar work) receive pursuant to the provisions of law, and applicable collective bargaining agreement or otherwise as made available to the regular employees of the employer. Each participating person shall be given the opportunity to work sufficient hours to earn a net wage of at least the amount such person would have been entitled to receive as recipients of public assistance or, where applicable, the amount such person would have received for his or her household, including the amount for dependents. Such net wage shall be calculated by deducting from gross wages federal income taxes, federal employment taxes, state income taxes, local income taxes and union dues, if any. No program shall be approved under this section unless the commissioner is satisfied that it contains adequate provisions for the prompt resolution of disputes concerning participation in the program and the obligations and benefits associated with it. Nothing contained in this section shall be deemed to affect, modify or abridge a participant's right to a fair hearing pursuant to section twenty-two of this chapter or representation thereat by counsel or, if applicable, the participant's collective bargaining representative.

(c) a participant employed by an employer subject to the civil service law or subject to rules consistent with such law is appointed to an appropriate classified position. Notwithstanding any other provision of law, rule or regulation, such position shall be deemed to be in the non-competitive class of the classified service only while such participant is serving in the position.

(d) no employee of the participating employer is displaced by any recipient employed pursuant to this section. For the purpose of this subdivision, the term displacement shall include partial displacement, such as a reduction in the customary hours of work (including overtime), wages, or employment benefits.

(e) no participant shall be employed:

(i) if any other employee of the employer is available for reinstatement, recall or reemployment following a leave of absence, furlough, layoff or suspension from the same or any substantially equivalent job;

(ii) when the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy or vacancies so created by hiring a participant whose wages are subsidized under this program; or

(iii) when the employee organization representing employees of the employer is engaged in a strike against the employer or such employees have been locked-out by the employer; or

(iv) where such employment results in the loss of a bargaining unit position as a result of work experience participants performing, in part or in whole, the work normally performed by the employee in such position.

(f) no position is created that will infringe in any way upon the promotional opportunities of currently employed individuals or individuals currently engaged in an approved apprenticeship training program.

(g) no participant shall remain in a position if another employee is eligible for promotion from an eligible list to that position. An employer shall, at least ten days prior to filling a position with a participant, notify any employee organization that represents employees who are engaged in similar work or training in the same or substantially equivalent job as that in which the placement is to be made, that it intends to make a placement pursuant to the terms of this section.

(h) where an employee organization represents employees who are engaged in similar work in the same or substantially equivalent job as that proposed to be funded under this program, an opportunity is provided for such organization to comment on the proposed placement of a participant or the administration of the program and the social services official or his or her designee shall respond to such comments within ten days of receipt thereof.

(i) employers are prohibited from using public assistance funds to encourage or discourage membership in, or participation in the activities of, any employee organization and each employer provides to the social services district assurances that no such funds will be used

for such purposes.

(j) nothing herein shall be construed to affect, modify or otherwise abridge any provision of the civil service law.

§ 336-f. Subsidized private sector and not-for-profit employment programs. 1. A social services district may establish subsidized private sector employment programs for public assistance recipients including, but not limited to, grant diversion programs, which may be supported wholly or in part with public assistance funds. Such programs shall be established through agreements between local districts and employers, including not for profit employers; provided, however, that, if appropriate, the department may act on behalf of one or more local districts in establishing such agreements.

2. Programs may include, but need not be limited to, on-the-job training programs which reimburse employers for the cost of training public assistance recipients through wage subsidies.

3. The social services official or the department is authorized to transfer public assistance funds to employers through written agreements developed and executed in accordance with department regulations.

4. A recipient may be placed in a subsidized private sector or not-for-profit employment activity only if:

(a) the conditions of employment including such factors as the type of work to be performed, the geographic location of the job, and the qualifications of the participant are appropriate and reasonable.

(b) the recipient is deemed an employee for purposes of the applicable collective bargaining and labor laws and receives the same benefits and protections as an employee similarly situated (working a similar length of time and doing similar work) receives pursuant to the provisions of law, an applicable collective bargaining agreement or otherwise as made available to the employees of the employer.

(c) no employee of the participating employer is displaced by any recipient hired pursuant to this section. For the purpose of this subdivision, the term displacement shall include partial displacement,

such as a reduction in the customary hours of work (including overtime), wages, or employment benefits.

(d) no participant shall be hired:

(i) if any other employee of the employer is available for reinstatement, recall or reemployment following a leave of absence, furlough, layoff or suspension from the same or any substantially equivalent job; or

(ii) when the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy or vacancies so created by hiring a participant whose wages are subsidized under this program; or

(iii) when the employee organization representing employees of the employer is engaged in a strike against the employer or such employees have been locked-out by the employer; or

(iv) when such hiring will result in the loss of a bargaining unit position as a result of work experience participants performing, in part or in whole, the work normally performed by the employee in such position.

(e) no job is created that will infringe in any way upon the promotional opportunities of current employees or individuals currently engaged in an approved apprenticeship training program.

(f) no participant shall remain in a job if another employee is eligible for promotion to that job. An employer shall, at least ten days prior to filling a position with a participant, notify any employee organization that represents employees who are engaged in similar work or training in the same or substantially equivalent jobs as those in which the placement is to be made, that it intends to make a placement pursuant to the terms of this section.

(g) where an employee organization represents employees who are engaged in similar work in the same or substantially equivalent jobs as those proposed to be funded under this program, an opportunity is provided for such organization to comment on the proposed placement of a participant or the administration of the program and the social services official or his or her designee shall respond to such comments within ten days of receipt thereof.

(h) employers are prohibited from using public assistance funds to encourage or discourage membership in, or participation in the

activities of, any employee organization and each employer provides to the social services district assurances that no such funds will be used for such purposes.

5. The social services district shall require every private or not-for-profit employer that intends to hire one or more work activity participants to certify to the district whether such employer has, in the past five years, been convicted of a felony or a misdemeanor the underlying basis of which involved workplace safety and health or labor standards. Such employer shall also certify as to all violations issued by the department of labor within the past five years. The social services official in the district in which the participant is placed shall determine whether there is a pattern of convictions or violations sufficient to render the potential employer ineligible. Employers who submit false information under this section shall be subject to criminal prosecution for filing a false instrument.

§ 337. Responsibilities of state departments and agencies. 1.

Notwithstanding any provision of this chapter to the contrary, responsibility for the operation and administration of work, employment and training programs in connection with the programs administered pursuant to this chapter shall be vested in the commissioner subject to regulations, procedures and instructions of the department.

2. The department is authorized to enter into agreements with any state agency, social services district or other entity for performance of activities authorized under this title.

§ 338. Cooperation of state departments. There shall be such cooperative agreements and arrangements between and among the department, the state department of social services or its successor agency, the state department of education and other appropriate state departments as shall be necessary to assure compliance with federal and state requirements or requirements of this title relating to employment programs for applicants of and recipients of public assistance and to

assure that the purposes of such program will be effectively accomplished. The purpose of such arrangements is to promote interagency planning, coordinate service delivery and identify needed resources for the implementation of such employment programs.

§ 339. Reports. The commissioner shall require, from each social services district, information and reports sufficient and timely to enable the state to meet all federal reporting requirements.

§ 340. Technical assistance. The commissioner shall provide technical assistance to social services districts in the development, implementation and administration of plans described in section three hundred thirty-three of this title.

The department shall monitor the implementation and ongoing operation of the programs pursuant to this title. Such monitoring shall include review of sample cases to assess compliance with applicable state and federal statutes and regulations.

§ 341. Conciliation; refusal to participate. 1. (a) Consistent with federal law and regulations and this title, if a participant has failed or refused to comply with the requirements of this title, the social services district shall issue a notice in plain language indicating that such failure or refusal has taken place and of the right of such participant to conciliation to resolve the reasons for such failure or refusal to avoid a pro-rata reduction in public assistance benefits for a period of time set forth in section three hundred forty-two of this title. The notice shall indicate the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title and the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits. The notice shall indicate that the participant has seven days to request conciliation with the district regarding such failure or refusal in the case of a safety net participant and ten days in the case of a family

assistance participant. The notice shall also include an explanation in plain language of what would constitute good cause for non-compliance and examples of acceptable forms of evidence that may warrant an exemption from work activities, including evidence of domestic violence, and physical or mental health limitations that may be provided at the conciliation conference to demonstrate such good cause for failure to comply with the requirements of this title. If the participant does not contact the district within the specified number of days, the district shall issue ten days notice of intent to discontinue or reduce assistance, pursuant to regulations of the department. Such notice shall also include a statement of the participant's right to a fair hearing relating to such discontinuance or reduction. If such participant contacts the district within seven days in the case of a safety net participant or within ten days in the case of a family assistance participant, it will be the responsibility of the participant to give reasons for such failure or refusal.

(b) Unless the district determines as a result of such conciliation process that such failure or refusal was willful and was without good cause, no further action shall be taken. If the district determines that such failure or refusal was willful and without good cause, the district shall notify such participant in writing, in plain language and in a manner distinct from any previous notice, by issuing ten days notice of its intent to discontinue or reduce assistance. Such notice shall include the reasons for such determination, the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title, the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits, and the right to a fair hearing relating to such discontinuance or reduction. Unless extended by mutual agreement of the participant and the district, conciliation shall terminate and a determination shall be made within fourteen days of the date a request for conciliation is made in the case of a safety net participant or within thirty days of the conciliation notice in the case of a family assistance participant.

2. (a) The department shall establish in regulation a conciliation procedure for the resolution of disputes related to an individual's participation in programs pursuant to this title.

(b) The district shall contract with an independent entity, approved by the department, or shall use designated trained staff at the supervisory level who have no direct responsibility for the participant's case to mediate disputes in the conciliation conference. If no such supervisory staff or independent entity is available, the district may designate another trained individual, who has no direct responsibility for the participant's case to mediate disputes in the conciliation conference.

(c) If a participant's dispute cannot be resolved through such conciliation procedure, an opportunity for a fair hearing shall be provided. No sanction relating to the subject dispute may be imposed during the conciliation process.

3. When any family assistance participant required to participate in work activities fails to comply with the provisions of this title, the social services district shall take such actions as prescribed by appropriate federal law and regulation and this title.

4. When any safety net participant required to participate in work activities fails to comply with the provisions of this title, the social services district shall deny assistance to such participant in accordance with section three hundred forty-two of this title.

5. (a) To the extent that federal law requires, a social services district shall provide to those family assistance participants whose failure to comply has continued for three months or longer a written reminder of the option to end a sanction after the expiration of the applicable minimum sanction period by terminating the failure to comply as specified in subdivision three of this section. Such notice shall advise that the participant may immediately terminate the first or second sanction by participating in the program or accepting employment and that any subsequent sanction after six months have elapsed may be terminated by participating in the program or accepting employment.

(b) A social services district shall provide to those safety net participants whose failure to comply has continued for the length of the sanction period or longer a written reminder of the option to end a sanction after the expiration of the applicable minimum sanction period

by terminating the failure to comply as specified in subdivision four of this section.

6. Consistent with federal law and regulation, no action shall be taken pursuant to this section for failure to participate in the program or refusal to accept employment if:

(a) child care for a child under age thirteen (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in activities pursuant to this title or accept employment and such care is not available and the social services district fails to provide such care;

(b) (1) the employment would result in the family of the participant experiencing a net loss of cash income; provided, however, a participant may not claim good cause under this paragraph if the social services district assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the participant was receiving at the time the offer of employment is made; or

(c) the participant meets other grounds for good cause set forth by the department in its implementation plan for this title which, at a minimum, must describe what circumstances beyond the household's control will constitute "good cause".

7. The provisions of this section shall not apply to persons who are residents of a city having a population of one million or more people.

§ 341-a. Re-engagement; conciliation; refusal to participate. 1. The provisions of this section shall apply to persons who are residents of a city having a population of one million or more people.

2. (a) Consistent with federal law and regulations and this title, if a participant has failed or refused to comply with the requirements of this title and the district has determined that he or she is not exempt

from such requirements and has verified that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal, the social services district shall issue a re-engagement notice in plain language indicating that such failure or refusal has taken place and of the right of such participant to avoid a pro-rata reduction in public assistance benefits through the re-engagement process. "Re-engagement process" shall mean the process through which a participant may avoid a pro-rata reduction in public assistance benefits by agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities, by notifying the district that he or she has become exempt from the requirements of this title, or by resolving the reasons for such failure or refusal at a conciliation conference. The notice shall indicate that the participant has ten days to request re-engagement with the district. The notice shall indicate the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title and the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits and the district has verified that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal.

(1) If a participant chooses to avoid a pro-rata reduction in public assistance benefits through a conciliation conference, it will be the responsibility of the participant to give reasons for such failure or refusal. The re-engagement notice shall also include an explanation in plain language of what would constitute good cause for non-compliance and examples of acceptable forms of evidence that may warrant an exemption from work activities, including evidence of domestic violence, and physical or mental health limitations that may be provided at the conciliation conference to demonstrate such good cause for failure to comply with the requirements of this title. Unless as part of the re-engagement process the participant does not agree to comply, has not become exempt or the district determines as a result of the conciliation conference that such failure or refusal was willful and without good cause, no further action shall be taken.

(2) If the participant does not contact the district within ten days of the re-engagement notice, the district shall make a finding of

whether the alleged failure or refusal to comply was willful and without good cause and shall consider any evidence in the possession of the district indicating that the participant has good cause and if the participant is otherwise participating in work activities, there shall be no finding of willfulness without good cause based on a single appointment or infraction.

(b) If the district determines that such failure or refusal was willful and without good cause, and that the individual is not exempt from the requirements of this title, the district shall notify such participant in writing, in plain language and in a manner distinct from any previous notice, by issuing ten days notice of its intent to discontinue or reduce assistance. Such notice shall include the reasons for such determination, the specific instance or instances of willful refusal or failure to comply without good cause with the requirements of this title, shall verify that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal, and specify the necessary actions that must be taken to avoid a pro-rata reduction in public assistance benefits, including agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities or notifying the district that he or she has become exempt from the requirements of this title and the right to a fair hearing relating to such discontinuance or reduction.

3. (a) The department shall establish in regulation a conciliation procedure for the resolution of disputes related to an individual's participation in programs pursuant to this title.

(b) The district shall contract with an independent entity, approved by the department, or shall use designated trained staff at the supervisory level who have no direct responsibility for the participant's case to mediate disputes in the conciliation conference.

(c) If a participant's dispute cannot be resolved through such conciliation procedure, an opportunity for a fair hearing shall be provided. No sanction relating to the subject dispute may be imposed during the re-engagement process.

4. When any participant required to participate in work activities

fails to comply with the provisions of this title, the social services district shall take such actions as prescribed by appropriate federal law and regulation and this title.

5. Consistent with federal law and this title, a social services district shall provide to those participants whose failure to comply has continued for thirty days or longer a written reminder of the option to end a sanction by terminating the failure to comply as specified in subdivision two of this section. Such notice shall advise that the participant may immediately terminate the sanction by either agreeing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities or notifying the district that he or she has become exempt from the requirements of this title.

6. Consistent with federal law and regulation and this title, no notice shall be issued as specified in subdivision two of this section unless it has been determined that the individual is not exempt from the requirements of this title and has determined that appropriate child care, transportation and accommodations for disability were in place at the time of such failure or refusal to comply with the requirements of this title and no action shall be taken pursuant to this section for failure to participate in the program or refusal to accept employment if:

(a) child care for a child under age thirteen (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate or continue participation in activities pursuant to this title or accept employment and such care is not available and the social services district fails to provide such care;

(b) (1) the employment would result in the family of the participant experiencing a net loss of cash income; provided, however, a participant may not claim good cause under this paragraph if the social services district assures that the family will not experience a net loss of cash income by making a supplemental payment;

(2) net loss of cash income results if the family's gross income less necessary work-related expenses is less than the cash assistance the

participant was receiving at the time the offer of employment is made;
or

(c) the participant meets other grounds for good cause set forth by the department in its implementation plan for this title which, at a minimum, must describe what circumstances beyond the household's control will constitute "good cause".

§ 342. Noncompliance with the requirements of this title. 1. In accordance with the provisions of this section an individual who is required to participate in work activities shall be ineligible to receive public assistance if he or she fails to comply, without good cause, with the requirements of this title. Such ineligibility shall be for the amount and periods specified in this section. Good cause for failing to comply with the requirements of this title shall be defined in department regulations, provided, however, that the parent or caretaker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of this section if the individual can demonstrate, in accordance with the regulations of the office of children and family services department, that lack of available child care prevents such individual from complying with the work requirements of this title. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

2. In the case of an applicant for or recipient of public assistance who is a parent or caretaker of a dependent child the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata:

(a) for the first instance of failure to comply without good cause with the requirement of this article until the individual is willing to comply;

(b) for the second instance of failure to comply without good cause with the requirements of this article, for a period of three months and

thereafter until the individual is willing to comply;

(c) for the third and all subsequent instances of failure to comply without good cause with the requirements of this article, for a period of six months and thereafter until the individual is willing to comply.

3. In the case of an individual who is a member of a household without dependent children applying for or in receipt of safety net assistance the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata:

(a) for the first such failure or refusal, until the failure or refusal ceases or ninety days, whichever period of time is longer;

(b) for the second such failure or refusal, until the failure ceases or for one hundred fifty days, whichever period of time is longer; and

(c) for the third and all subsequent such failures or refusals, until the failure ceases or one hundred eighty days, whichever period of time is longer.

4. A recipient of public assistance who quits or reduces his hours of employment without good cause shall be considered to have failed to comply with the requirements of this article and shall be subject to the provisions of this section.

5. A person described in paragraph (b) of subdivision seven of section one hundred fifty-nine of this chapter may not be sanctioned if his or her failure to comply with requirements of this title are related to his or her health status.

6. The provisions of this section shall not apply to persons who are residents of a city having a population of one million or more people.

§ 342-a. Noncompliance with the requirements of this title. 1. The provisions of this section shall apply to persons who are residents of a city having a population of one million or more people.

2. In accordance with the provisions of this section an individual who is required to participate in work activities shall be ineligible to

receive public assistance if he or she fails to comply, without good cause, with the requirements of this title and the district has determined that he or she is not exempt from such requirements and has verified that appropriate child care, transportation, and accommodations for disability were in place at the time of such failure or refusal. Such ineligibility shall be for the amount and period specified in this section. Good cause for failing to comply with the requirements of this title shall be defined in department regulations, provided, however, that the parent or caretaker relative of a child under thirteen years of age shall not be subject to the ineligibility provisions of this section if the individual can demonstrate, in accordance with the regulations of the office of children and family services, that lack of available child care prevents such individual from complying with the work requirements of this title. The parent or caretaker relative shall be responsible for locating the child care needed to meet the work requirements; provided, however, that the relevant social services district shall provide a parent or caretaker relative who demonstrates an inability to obtain needed child care with a choice of two providers, at least one of which will be a regulated provider.

3. In the case of an applicant for or recipient of public assistance whom the district has determined is not exempt from the requirements of this title and who is a parent or caretaker of a dependent child, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata until the individual is willing to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities.

4. In the case of an individual who is a member of a household without dependent children whom the district has determined is not exempt from the requirements of this title and who is applying for or in receipt of safety net assistance, the public assistance benefits otherwise available to the household of which such individual is a member shall be reduced pro-rata until the failure or refusal to comply with the requirements of this title consistent with any medical condition which may limit the individual's ability to participate in work activities

ceases.

5. A recipient of public assistance whom the district has determined is not exempt from the requirements of this title and who quits or reduces his hours of employment without good cause or due to any medical condition which may limit the individual's ability to participate in work activities shall be considered to have failed to comply with the requirements of this article and shall be subject to the provisions of this section.

6. A person described in paragraph (b) of subdivision seven of section one hundred fifty-nine of this chapter may not be sanctioned if his or her failure to comply with requirements of this title is related to his or her health status.

TITLE 10

Aid to Dependent Children

Section 343. Declaration of object.

344. Responsibility.

345. Definition.

348. Application for family assistance.

349. Eligibility.

349-a. Procedures to insure the protection of victims of domestic violence.

349-b. Deserted, abandoned and out-of-wedlock children; special provisions.

350. Character and adequacy.

350-a. Protective payments.

350-j. Emergency assistance to needy families with children.

352. Deserted or abandoned children; special provisions.

352-a. Children born out of wedlock; special provisions.

353. Grant of aid.

355. Rules, regulations and forms.

356. Moneys to be provided by counties and cities; how expended.

357. Quarterly estimates.

- 358. Federal temporary assistance for needy families block grant.
- 358-a. Dependent children in foster care.
- 358-b. Limitations on state reimbursement for foster care.
- 358-c. Rules of court.
- 360. Real property of legally responsible relatives.

§ 343. Declaration of object. It is hereby declared a state policy that aid to dependent children be provided under the provisions of this title in every county of the state.

§ 344. Responsibility. 1. Each social services district shall be responsible for providing family assistance, under this title, to persons eligible therefor who reside in its territory. Temporary absence, within or without the state, of such persons from such territory, except as otherwise provided, shall not affect their eligibility for such aid.

2. Aid shall be construed to include services, particularly those services which may be necessary for each child in the light of the particular home conditions and his or her other needs.

3. Each social services district shall administer the aid, care and services provided under this title, in accordance with state and federal requirements.

§ 345. Definition. As used in this title the term "child" means a person under eighteen years of age, or a person under nineteen years of age who is a full-time student regularly attending a secondary school or in the equivalent level of vocational or technical training if, before such person attains age nineteen, such person may reasonably be expected to complete the program of such secondary school or training.

§ 348. Application for family assistance. 1. Application for family assistance shall be made to the appropriate social services district.

2. Application for or receipt of family assistance shall operate as an assignment to the state and the social services district concerned of any rights to support that accrue during the period that a family receives family assistance from any other person as such applicant or recipient may have either on their own behalf or on behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance. Applicants for or recipients of family assistance shall be informed that such application for or receipt of such benefits will constitute such an assignment.

3. Such assignment shall terminate with respect to current support rights upon a determination by a local commissioner that such person is no longer eligible for family assistance, except with respect to the amount of any unpaid support obligation that has accrued during the period that a family received family assistance.

4. It shall be the duty of social services officials to provide same day referral of applicants for family assistance support services as provided under title six-A of article three of this chapter pursuant to part D of title IV of the federal social security act, as part of the initial application for family assistance.

§ 349. Eligibility. A. Family assistance shall be given to a pregnant individual, a parent or other relative as herein specified for the benefit of a child under eighteen years of age, or of a child under nineteen years of age who is a full-time student regularly attending a secondary school or in the equivalent level of vocational or technical training if, in the judgment of the social services official:

1. the granting of an allowance will be in the interest of such child, and

2. the parent or other relative is a fit person to bring up such child

so that his or her physical, mental and moral well-being will be safe-guarded, and

3. such child is a resident of the state on the date of application for aid.

B. 1. An allowance may be granted for the aid of such child who is living with a parent or other adult related to him or her by blood, marriage or adoption eligible to receive assistance on his or her behalf pursuant to the federal social security act, the provisions of this chapter and regulations of the department.

2. Notwithstanding the provisions of this title and titles three and four of this article to the contrary, the department may by regulation require that some or all persons, or households containing such persons, who are otherwise eligible for family assistance and are permanently disabled and awaiting determinations of eligibility for federal supplemental security income under title XVI of the federal social security act receive family assistance without use of federal funding and the department is authorized to reclassify retroactively all or a portion of the amount of any family assistance which otherwise has been or would be received by any such person or household if such reclassification is in the financial interests of the state; provided, however, that any such retroactive reclassification shall be accomplished without diminution or increase of the family assistance grant previously paid and shall not affect any rights, obligations or entitlements of any such person under the family assistance program. Any such transfer or reclassification may be accomplished by appropriate notation in the records of the social services district or the department, and no other notice thereof need be made.

C. In making such allowances consideration shall be given to the ability of the relative making application and of any other relatives to support and care for or to contribute to the support and care of such child. In making all such allowances it shall be made certain that the religious faith of the child shall be preserved and protected.

D. Family assistance shall not be payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be included in determining the amount of such aid which is payable for any month to a family if, on the last day of such month, such individual is participating in a strike.

§ 349-a. Procedures to insure the protection of victims of domestic violence. 1. The department, after consultation with the office for the prevention of domestic violence and statewide domestic violence advocacy groups, shall by regulation establish requirements for social services districts to notify all applicants and, upon recertification, recipients, of procedures for protection from domestic violence and the availability of services. Such notice shall inform applicants and recipients that the social services district will make periodic inquiry regarding the existence of domestic violence affecting the individual. Such notice shall also inform individuals that response to these inquiries is voluntary and confidential; provided, however, that information regarding neglect or abuse of children will be reported to child protective services.

2. Such inquiry shall be performed utilizing a universal screening form to be developed by the department after consultation with the office for the prevention of domestic violence and statewide domestic violence advocacy groups. Such screening may be conducted by telephone or other digital means at the request of the applicant or recipient. An individual may request such screening at any time, and any individual who at any time self identifies as a victim of domestic violence shall be afforded the opportunity for such screening.

3. An individual indicating the presence of domestic violence, as a result of such screening, shall be promptly referred to a domestic violence liaison who meets training requirements established by the department, after consultation with the office for the prevention of domestic violence and statewide domestic violence advocacy groups.

4. Following referral to a domestic violence liaison, (a) the individual shall be informed by the domestic violence liaison of services, which shall be available on a voluntary basis; and (b) the domestic violence liaison shall conduct an assessment to determine if and to what extent domestic violence is a barrier to the individual's compliance with public assistance requirements or to employment and such assessment shall be based upon an attestation or the relevant information and corroborating evidence provided by the individual alleging such abuse; and (c) the domestic violence liaison shall grant any appropriate waivers of such program requirements based on such assessment. Such waivers shall, to the extent permitted by federal law, include, but not be limited to, residency requirements, child support cooperation requirements and employment and training requirements; provided, however, that exemptions from the sixty month limit on receipt of benefits under the federal temporary assistance to needy families block grant program shall be available only when the individual would not be required to participate in work or training activities because of an independently verified physical or mental impairment resulting from domestic violence, anticipated to last for three months or longer, or if the individual is unable to work because of the need to care for a dependent child who is disabled as a result of domestic violence. Provided, however, that pursuant to section one hundred forty-two of the welfare reform act of 1997 victims of domestic violence may be exempted from the application of subdivision two of section three hundred forty-nine of this article on the basis of hardship.

5. Waivers granted pursuant to subdivision five of this section shall be provided pursuant to a determination of good cause in cases where compliance with such requirements would make it more difficult for the individual or the individual's children to escape from domestic violence, or subject the individual, or the individual's children, to further risk of domestic violence. Such waivers shall be for an initial period of no less than four months; provided, however, that all such waivers shall be subject to on-going review of the individual's circumstances by the domestic violence liaison, and may be extended, modified or terminated in accordance therewith. An individual may decline a waiver or terminate an existing waiver at any time without

penalty.

6. Information with respect to victims of domestic violence shall not be released to any outside party or parties or other governmental agencies unless the information is required to be disclosed by law, or unless authorized in writing by the applicant or recipient.

7. When used in this section, the term statewide domestic violence advocacy groups shall mean an organization designated by the federal department of health and human services to coordinate statewide improvements within local communities, social services systems, and programming regarding the prevention and intervention of domestic violence in New York state.

§ 349-b. Deserted, abandoned and out-of-wedlock children; special provisions. 1. In addition to other eligibility requirement each person who is applying for or receiving assistance under this title, and who is otherwise eligible for assistance under this title, shall be required, as a further condition of eligibility for such assistance:

(a) to assign to the state and the social services district any rights to support such person may have either in his own behalf or in behalf of any other family member for whom he is applying for or receiving aid; and

(b) to cooperate with the state and the social services official, in accordance with standards established by regulations of the department consistent with federal law, in establishing the paternity of a child born out-of-wedlock for whom assistance under this title is being applied for or received, in their efforts to locate any absent parent and in obtaining support payments or any other payments or property due such person and due each child for whom assistance under this title is being applied for or received, except that an applicant or recipient shall not be required to cooperate in such efforts in cases in which the social services official has determined, in accordance with criteria, including the best interests of the child, as established by regulations of the department consistent with federal law, that such applicant or recipient has good cause to refuse to cooperate. Each social service

district shall inform applicants for and recipients of family assistance required to cooperate with the state and local social services officials pursuant to the provisions of this paragraph, that where a proceeding to establish paternity has been filed, and the allegation of paternity has been denied by the respondent, that there shall be a stay of all paternity proceedings and related local social services proceedings until sixty days after the birth of the child. Such applicants and recipients shall also be informed that public assistance and care shall not be denied during the stay on the basis of refusal to cooperate pursuant to the provisions of this paragraph.

2. The amount of the payments due from the absent parent in meeting his support obligations under this section shall be the amount of a current court support order or, in the absence of a court order, if such parent agrees to meet his support obligation, an amount to be determined in accordance with a support formula established by the department and approved by the secretary of the federal department of health, education and welfare.

§ 350. Character and adequacy. 1. (a) Allowances shall be adequate to enable the father, mother or other relative to bring up the child properly, having regard for the physical, mental and moral well-being of such child, in accordance with the provisions of section one hundred thirty-one-a of this chapter and other applicable provisions of law. Allowances shall provide for the support, maintenance and needs of one or both parents if in need, and in the home and for the support, maintenance and needs of the other relative if he or she is without sufficient means of support, provided such parent, parents and relative are not receiving federal supplemental security income payments and/or additional state payments for which they are eligible. The social services official may, in his discretion, make the incapacitated parent the grantee of the allowance and when allowances are granted for the aid of a child or children due to the unemployment of a parent, such official may make the unemployed parent the grantee of the allowance.

(b) When permitted in accordance with regulations of the department, provision may be made under this title for any item of maintenance of

eligible individuals who are receiving medical assistance for needy persons in a hospital, nursing home, infirmary or other eligible medical institutions. However, aid under this title shall not include provisions for care or services in any hospital, nursing home, infirmary or other eligible medical institutions when such care and services may be provided as medical assistance for needy persons pursuant to title eleven of article five.

(e) Any inconsistent provisions of this title notwithstanding, so long as federal law and regulations require, family planning services and supplies shall be offered and promptly furnished to eligible persons of childbearing age, including children who can be considered sexually active, who desire such services and supplies, in accordance with the regulations of the department. In order to maximize federal financial participation, the department may require that such services shall be furnished under title eleven of article five. No person shall be compelled or coerced to accept such services or supplies.

(f) When, in the judgment of the social services official, care cannot be provided in the mother's own home, care may be provided in a licensed maternity home, a family home or boarding home for a child or his mother in need of public assistance and care during pregnancy and during and after delivery and for eligible persons assistance may be provided in a family home or boarding home, provided that no assistance will be provided under this title when such assistance can be provided under title eleven. Payments to such homes and institutions for care and maintenance provided by them shall be at rates established pursuant to law, and regulations of the department. The department, however, shall not establish rates of payment to homes and institutions without approval of the director of the budget.

(g) The social services official of a social services district shall advise persons who are eligible for aid under this title of the availability for their benefit of child health screening services and of care and treatment of disabilities and conditions discovered by such screening under the provisions of title eleven of article five of this chapter; and upon request such official shall promptly furnish such services or care and treatment under the provisions of such title.

2. Assistance funded in whole or in part under the temporary

assistance to needy families block grant program temporary assistance to needy families (a) shall not be granted to any family which includes an adult who has received any form of assistance funded in whole or in part under the temporary assistance to needy families block grant program under title IV-A of the federal social security act in this state or in any other state for a cumulative period of longer than sixty months, provided that, (i) in determining the number of months for which an individual who is a parent or pregnant has received assistance, there shall not be included any period in which the individual was a minor child who was not the head of household or married to the head of household, and (ii) the social services district shall, in accordance with regulations of the department, subject to any federal limitations, exempt a family from the application of this subdivision on the basis of hardship when the adult family member is unable to work because of an independently verified physical or mental impairment including those resulting from domestic violence, or when the adult family member is in receipt of supplemental security income payments under title XVI of the federal social security act or additional state payments under title six of this article, and (iii) provided that periods in which an adult receives cash assistance in the safety net assistance program shall be included in the cumulative period referred to in this paragraph regardless of whether such assistance was funded in whole or in part by the temporary assistance to needy families block grant program;

(b) may be increased, decreased or revoked at any time; and

(c) except in the case of a child reaching the age of eighteen years, may be continued for a period of not more than one month after a child becomes ineligible to be granted allowance under this title.

4. Adequate supervision of all families receiving such aid shall be provided and supervisory visits shall be made to each family as frequently as the regulations of the department and the circumstances of the case may require.

5. The social services official of the social services district shall in cooperation with other public officers, private relief societies and individuals seek to secure for persons to whom allowances are granted as provided in this title or who apply for such allowances additional

assistance whenever the social services official is unable adequately to provide for their needs and the needs of their families. It shall be the duty of such official and the family court to cooperate with each other in the effective enforcement of the obligation of the parents of children for whose benefit such allowances are granted to support such children to the extent of the parents' ability to do so.

§ 350-a. Protective payments. 1. Whenever the social services official who is granting allowances of family assistance to a relative for the benefit of a child determines that such relative is unable to manage the allowances he or she may, when appropriate in accordance with state and federal requirements, pay the allowances to another individual who is interested in or concerned with the welfare of the child and relative.

2. The determination of the social services official to pay allowances to another individual pursuant to subdivision one may be appealed to the department by the relative concerned who shall be given an opportunity for a fair hearing on his appeal. The department may review such determination on its own motion. The powers and procedures prescribed by section twenty-two of this chapter shall likewise apply to the determinations, appeals and reviews made pursuant to this section.

3. Any relative or other person who is granted an allowance of family assistance for the benefit of a child or children and who wilfully uses all or any part of such allowance other than for the benefit of such child or children, shall be guilty of a misdemeanor.

§ 350-j. Emergency assistance to needy families with children. 1. Any inconsistent provisions of this chapter or of any other law notwithstanding, so long as federal aid is available therefor, a social services district shall provide emergency assistance as herein defined to persons eligible, including migrant workers with families.

2. For purposes of this section, the term "emergency assistance" means aid, care and services to meet the emergency needs of a child or the

household in which he or she is living, in the following circumstances:

(a) where the child is under twenty-one years of age; and

(b) the child is living with, or within the previous twelve months has lived with, an adult related by blood, marriage or adoption; and

(c) in cases of applications for grants of cash assistance, such child or such household is not categorically eligible for or receiving family assistance; and

(d) such emergency needs resulted from a catastrophic occurrence or from a situation which threatens family stability and which has caused the destitution of the child and/or household; and

(e) such occurrence or situation could not have been foreseen by the applicant, was not under his or her control and, in the case of a person receiving public assistance, did not result from the loss, theft or mismanagement of a regular public assistance grant; and

(f) the emergency grant being applied for will not replace or duplicate a public assistance grant already made under section one hundred thirty-one-a of this chapter.

3. Emergency assistance to needy families with children shall be provided to the extent of items of need and services set forth in sections one hundred thirty-one and one hundred thirty-one-a of this chapter, and items of medical services set forth in section three hundred sixty-five-a of this chapter, and in amounts set forth in the regulations of the department for children who are without available resources, and when such assistance is necessary to avoid destitution or to provide them with living arrangements in a home, and such destitution or such need did not arise because such children or relatives refused without good cause to accept employment or training for employment; provided, however, that no assistance shall be provided which would duplicate assistance under sections one hundred thirty-one and one hundred thirty-one-a of this article for which a person is eligible or would be eligible but for a sanction for violation of the requirements of title nine-B of article five of this chapter or other requirement of state law and provided further that, notwithstanding any inconsistent provision of this section or section one hundred thirty-one-a of this article, persons for whom preventive services are being provided under title four of article six of this chapter or who are living in foster

care or in public, congregate or group facilities, such as residential facilities for victims of domestic violence, may, pursuant to regulations of the department within amounts specifically appropriated therefor and subject to the terms and conditions of such appropriation, receive assistance hereunder on their behalf for such services or for care in such facilities in amounts exceeding those set forth in section one hundred thirty-one-a of this article.

5. In scheduling investigations concerning applications for emergency assistance pursuant to this section, local social services districts shall give priority to such applications.

§ 352. Deserted or abandoned children; special provisions. 1. A social services official who makes a family assistance allowance for the benefit of a child who has been abandoned or deserted by a parent shall promptly give notice thereof to the appropriate district attorney where there is reason to believe such parent may have violated the provisions of section 260.00 of the penal law.

2. The social services official providing family assistance allowances pursuant to the provisions of this title, for the benefit of a child who has an absent parent, shall have and shall perform the following duties and powers in addition to others imposed or conferred upon him or her by or pursuant to other provisions of this chapter or other law:

(a) to take such steps and make such efforts to locate any parent of such child whose whereabouts are unknown to such official as all available means will allow; such means shall include, and there shall be utilization of, appropriate services offered by the department, by agencies of other states and by the federal government;

(b) to determine the ability and potential ability of the parents of each such child to support or to contribute to the support of such child;

(c) to establish cooperative arrangements with the family court, county attorneys, corporation counsels and other law enforcement officials, for the location of missing parents of such children and for the enforcement of their obligations to support or contribute to support

of such children to the extent of their ability;

(d) to provide pertinent information to such court and law enforcement officials to enable them to assist in locating absent parents of such children and in securing support payments therefrom, provided that there is an agreement between such social services official and such court and such law enforcement officials insuring that such information will be used only for the purpose intended;

(e) to reimburse, to the extent that state and federal requirements authorize or require, appropriate courts and law enforcement officials for activities related to the requirements of this chapter and the family court act with respect to enforcement of support obligations and for services they have undertaken on behalf of such official.

3. For purposes of this section, "absent parent" shall mean any person who is legally responsible for a spouse or child, who is absent from the household, whether such person's location is known or unknown, and fails to provide for the support of such spouse or child.

§ 352-a. Children born out of wedlock; special provisions. 1. The social services official providing family assistance allowances, pursuant to the provisions of this title, for the benefit of children born out of wedlock, shall have and shall perform the following duties and powers in addition to others imposed or conferred upon him or her by or pursuant to other provisions of this chapter or other law:

(a) to ascertain who may be the putative father of such child born out of wedlock, and take appropriate steps to establish the paternity thereof in accordance with applicable provisions of law;

(b) to determine the ability and potential ability of the parents of each such child to support or to contribute to the support of such child;

(c) to take such steps and make such efforts to locate any such parent whose whereabouts are unknown to such official as all available means will allow; such means shall include, and there shall be utilization of, appropriate services offered by the department, by agencies of other states and by the federal government;

(d) to establish cooperative arrangements with the family court,

county attorneys, corporation counsels and other law enforcement officials, for the establishment of paternity and location of missing parents of such children and for the enforcement of their obligations to support or contribute to support of such children to the extent of their ability;

(e) to provide pertinent information to such court and law enforcement officials to enable them to assist in locating putative fathers and deserting parents of such children, in establishing paternity and in securing support payments therefrom, provided that there is an agreement between such social services official and such court and such law enforcement officials insuring that such information will be used only for the purpose intended;

(f) to reimburse, to the extent that state and federal requirements authorize or require, appropriate courts and law enforcement officials for activities related to the requirements of this chapter and the family court act with respect to establishment of paternity and for services they have undertaken on behalf of such official.

§ 353. Grant of aid. Upon the completion of an investigation the proper social services official shall

(a) decide whether the applicant is eligible for and should receive family assistance, the amount, nature and manner of paying or providing it and the date on which it shall begin,

(b) notify the applicant of his decision in writing.

§ 355. Rules, regulations and forms. The department shall 1. supervise the administration of family assistance,

2. prescribe the form of and print and supply to the public welfare officials blanks for applications, reports, affidavits and such other forms as it may deem advisable,

3. make regulations necessary for the carrying out of the provisions of this title to the end that allowances may be granted and the provisions of this title administered uniformly throughout the state.

§ 356. Moneys to be provided by counties and cities; how expended.

1. The legislative body of each social services district shall annually appropriate to the commissioner of social services such sum as may be needed for family assistance, and for the administration thereof. When the assistance for which such social services district is responsible is administered, pursuant to title three-A of article three, by a social services official who is not an officer of the social services district for which the appropriation is made, all or part of the sum appropriated shall be made available to such other officer and to the municipality of which he or she is an officer, in the manner, and at such times, as is required by other provisions of this chapter. The legislative body of the social services district shall include such sums in the taxes to be levied for such social services district.

2. Allowances granted for family assistance shall be paid out of moneys appropriated or otherwise made available to the social services district.

3. Expenditures for allowances and administrative expenses under this title shall be a charge upon the county or city public welfare district.

§ 357. Quarterly estimates. Each social services district shall submit to the department quarterly estimates of its anticipated expenditures for family assistance and administrative expenses not less than thirty days before the first day of each of the quarters beginning on the first day of the months of July, October, January and April, in such form and together with such other information as the department may require.

§ 358. Federal temporary assistance for needy families block grant.

1. The department shall submit the plan pursuant to title IV-A of the federal social security act. The state's program under title IV-A shall be entitled "Family Assistance", and benefits under the state plan with

respect to the temporary assistance for needy families block grant shall be known as family assistance. The department shall act for the state in any negotiations relative to the submission and approval of such plan and make any arrangement which may be necessary to obtain and retain such approval and to secure for the state the benefits of such federal act relating to title IV-A. The department shall make such regulations not inconsistent with law as may be necessary to make such plan conform to such federal act and any rules and regulations adopted pursuant thereto. Such regulations may provide for operation of components of the program relating to refugees by contract with a private agency or agencies pursuant to section 412(e) of the immigration and nationality act (8 U.S. Code 1522(e)(7)). Any refugee whose needs are met pursuant to such a contract who would otherwise be a recipient of family assistance or safety net assistance shall be regarded for all other purposes as a recipient of family assistance or of safety net assistance, respectively. Each social services district shall be responsible for a share of the state's expenditures for operation of such a contract which shall be equal to the share of such expenditures such district would have borne after reimbursement from state and federal funds in accordance with section one hundred fifty-three of this article, had the expenditure been made by such district. The department shall make reports to such federal agency in the form and nature required by it and comply with any request or direction of such federal agency which may be necessary to assure the correctness and verification of such reports.

2. The department of taxation and finance shall accept and receive any and all grants of money awarded to the state pursuant to title IV-A of such social security act. All moneys so received shall be deposited by the department of taxation and finance in a special fund or funds and shall be used by the state exclusively for temporary assistance for needy families block grant and the administration thereof as provided in this chapter; provided, however, that portions of such moneys may be transferred to the child care and development block grant or the social services block grant as the legislature may from time to time provide. Such money shall be paid from such fund or funds on audit and warrant of the comptroller upon vouchers of or certification by the commissioner.

3. If and for so long as the federal government provides one hundred percent funding therefor, the department is authorized to operate a Cuban and Haitian entrant program and a refugee resettlement program pursuant to title IV of the federal immigration and nationality act, including provision for refugee cash assistance, refugee medical assistance, refugee child welfare services, and refugee social services. The department shall submit the plan for such refugee resettlement program to the federal department of health and human services and shall act for the state in any negotiations relative to the submission and approval of such plan and make any arrangement which may be necessary to obtain and retain such approval.

4. The department shall make such regulations not inconsistent with law as may be necessary to make such plan conform to such federal act and any rules and regulations adopted pursuant thereto. Such regulations may provide for operation of components of the program directly by the department, through social services districts on behalf of the department or, subject to the approval of the director of the budget upon a demonstration of cost-effectiveness, by contract with a private agency or agencies and may provide that an eligible recipient shall receive assistance pursuant to such contract in lieu of family assistance or safety net assistance.

5. The state program under title IV-A of the social security act shall permit individuals to accumulate funds in individual development accounts established pursuant to section four hundred three of the social security act as trust accounts funded with periodic contributions of earned income by the individual or of amounts matched by or through a not-for-profit organization described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of such Code; provided, however, that neither the state nor social services districts shall be required to make or match contributions or to administer any such account.

§ 358-a. Dependent children in foster care. (1) Initiation of judicial

proceeding. (a) A social services official who accepts or proposes to accept the custody and guardianship of a child by means of an instrument executed pursuant to the provisions of section three hundred eighty-four of this chapter, or the care and custody of a child as a public charge by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, shall determine whether such child is likely to remain in the care of such official for a period in excess of thirty consecutive days. If such official determines that the child is likely to remain in care for a period in excess of thirty consecutive days, such official shall petition the family court judge of the county or city in which the social services official has his or her office, to approve such instrument upon a determination that the placement of the child is in the best interest of the child, that it would be contrary to the welfare of the child to continue in his or her own home and, that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home and that prior to the initiation of the court proceeding required to be held by this subdivision, reasonable efforts were made to make it possible for the child to return safely home. In the case of a child whose care and custody have been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, approval of the instrument shall only be made upon an additional determination that all of the requirements of such section have been satisfied.

* (b) The social services official shall initiate the proceeding by filing the petition as soon as practicable, but in no event later than thirty days following removal of the child from the home provided, however, that the court shall receive, hear and determine petitions filed later than thirty days following removal of the child from his or her home, but state reimbursement shall not be available to the social services district for care and maintenance provided to such child. The social services official shall diligently pursue such proceeding. Where the care and custody of a child as a public charge has been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter for a period of thirty days or less for an indeterminate

period which such official deems unlikely to exceed thirty days, and thereafter such official determines that such child will remain in his or her care and custody for a period in excess of thirty days, such official shall, as soon as practicable but in no event later than thirty days following such determination, execute with the child's parent, parents or guardian a new instrument pursuant to the provision of section three hundred eighty-four or three hundred eighty-four-a of this chapter and shall file a petition in family court, pursuant to this section, for approval of such instrument. In such cases involving a social services official, expenditures for the care and maintenance of such child from the date of the initial transfer of his care and custody to the social services official shall be subject to state reimbursement.

* NB Effective until June 30, 2027

* (b) The social services official shall initiate the proceeding by filing the petition as soon as practicable, but in no event later than thirty days following removal of the child from the home provided, however, that the court shall receive, hear and determine petitions filed later than thirty days following removal of the child from his or her home, but state reimbursement to the social services district for care and maintenance provided to such child shall be denied pursuant to section one hundred fifty-three-d of this chapter. The social services official shall diligently pursue such proceeding. Where the care and custody of a child as a public charge has been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter for a period of thirty days or less for an indeterminate period which such official deems unlikely to exceed thirty days, and thereafter such official determines that such child will remain in his or her care and custody for a period in excess of thirty days, such official shall, as soon as practicable but in no event later than thirty days following such determination, execute with the child's parent, parents or guardian a new instrument pursuant to the provision of section three hundred eighty-four or three hundred eighty-four-a of this chapter and shall file a petition in family court, pursuant to this section, for approval of such instrument. In such cases involving a social services official, expenditures for the care and maintenance of such child from the date of the initial transfer of his care and custody to the social services

official shall be subject to state reimbursement, notwithstanding the provisions of section one hundred fifty-three-d of this chapter.

* NB Effective June 30, 2027

(2) Contents of petition. (a) Any petition required or authorized pursuant to subdivision one of this section shall allege whether the parent, parents or guardian executed the instrument because the parent, parents or guardian would be unable to make adequate provision for the care, maintenance and supervision of such child in his or their own home, and shall include facts supporting the petition. The petition shall contain a notice in conspicuous print providing that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights. The petition shall also set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and section three hundred eighty-four-c of this chapter, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of section three hundred eighty-four-c of this chapter. The petition shall also set forth the efforts which were made, prior to the placement of the child into foster care, to prevent or eliminate the need for removal of the child from his or her home and the efforts which were made prior to the filing of the petition to make it possible for the child to return safely home. If such efforts were not made, the petition shall set forth the reasons why these efforts were not made. The petition shall request that, pending any hearing which may be required by the family court judge, a temporary order be made transferring the care and custody of the child to the social services official in accordance with the provisions of subdivision three of this section. In the case of a child whose care and custody have been transferred to a social services official by means of an instrument executed pursuant to section three hundred eighty-four-a of this chapter, the petition shall also allege and there shall be shown by affidavit or other proof satisfactory to the court that all the requirements of such section have been satisfied, including the results of the investigation to locate relatives of the child, including any non-respondent parent and all of the child's grandparents. Such results

shall include whether any relative who has been located expressed an interest in becoming a foster parent for the child or in seeking custody or care of the child.

(b) The social services official who initiated the proceeding shall file supplemental information with the clerk of the court not later than ten days prior to the date on which the proceeding is first heard by the court. Such information shall include relevant portions, as determined by the department, of the assessment of the child and his family circumstances performed and maintained, and the family's service plan if available, pursuant to sections four hundred nine-e and four hundred nine-f of this chapter. Copies of such supplemental information need not be served upon those persons entitled to notice of the proceeding and a copy of the petition pursuant to subdivision four of this section.

(2-a) Continuing jurisdiction. (a) The court shall possess continuing jurisdiction over the parties until the child is discharged from placement and all orders regarding supervision, protection or services have expired.

(b) The court, upon approving an instrument under this section, shall schedule a permanency hearing pursuant to article ten-A of the family court act for a date certain not more than eight months after the placement of the child into foster care. Such date certain shall be included in the order approving the instrument.

(c) (i) Subject to the provisions of subparagraph (ii) of this paragraph, the court shall also maintain jurisdiction over a case for the purposes of hearing and deciding a motion brought by a former foster care youth, as defined in article ten-B of the family court act, or by a young adult who left foster care upon or after attaining the age of twenty-one, for contempt pursuant to section seven hundred fifty-three of the judiciary law against a social services district and/or social services official, as defined by section two of this chapter. In addition to any other defense, it shall be an affirmative defense to a motion filed in accordance with this paragraph that compliance with the court order was not possible due solely to the youth's refusal to consent to continuation of foster care placement where such refusal is documented in a signed, notarized letter executed by the youth after consultation with their attorney for the child.

(ii) The court shall maintain jurisdiction over a motion described in

subparagraph (i) of this paragraph if such motion is filed before the former foster care youth or young adult attains the age of twenty-three. The court's jurisdiction over any such motion shall continue until such motion and any related appeals are finally resolved.

(iii) If the youth is eligible to return to foster care pursuant to the provisions of article ten-B of the family court act, upon the consent of the youth, the court may convert a motion brought under this paragraph to a motion to return the youth to foster care.

(3) Disposition of petition. (a) If the court is satisfied that the parent, parents or guardian executed such instrument knowingly and voluntarily and because he or she would be unable to make adequate provision for the care, maintenance and supervision of such child in his or her home, and that the requirements of section three hundred eighty-four-a of this chapter, if applicable, have been satisfied and that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home and that prior to the initiation of the court proceeding required to be held by subdivision one of this section, reasonable efforts were made to make it possible for the child to return safely to his or her home, the court may find and determine that the best interests and welfare of the child would be promoted by removal of the child from such home, and that it would be contrary to the welfare of such child for the child to continue in such home, and the court shall thereupon grant the petition and approve such instrument and the transfer of the custody and guardianship or care and custody of such child to such social services official in accordance therewith. If the court determines that, where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home, that prior to the initiation of the court proceeding reasonable efforts were made to make it possible for the child to return safely to his or her home, or that it would be contrary to the best interests of the child to continue in the home, or that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such findings. Approval of such instrument in a proceeding pursuant to this section

shall not constitute a remand or commitment pursuant to this chapter and shall not preclude challenge in any other proceeding to the validity of the instrument. If the permanency plan for the child is adoption, guardianship, permanent placement with a fit and willing relative or another planned permanent living arrangement other than reunification with the parent or parents of the child, the court must consider and determine in its order whether reasonable efforts are being made to make and finalize such alternate permanent placement.

(b) For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where the court determines that:

(1) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision twelve of this section;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(5) the parent of such child has been convicted in any other

jurisdiction of an offense which includes all of the essential elements of any crime specified in subparagraph two, three or four of this paragraph, and the victim of such offense was the child or another child of the parent; or

(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated; unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. Such hearing shall be conducted pursuant to section one thousand eighty-nine of the family court act. The local social services official shall thereafter make reasonable efforts to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the local social services official may file a petition for termination of parental rights of the parent in accordance with section three hundred eighty-four-b of this chapter.

(c) For the purpose of this section, in determining reasonable efforts to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(d) For the purpose of this section, a sibling shall include a half-sibling.

(e) The order granting the petition of a social services official and approving an instrument executed pursuant to section three hundred eighty-four-a of this chapter may include conditions, where appropriate and specified by the judge, requiring the implementation of a specific plan of action by the social services official to exercise diligent efforts toward the discharge of the child from care, either to his own family or to an adoptive home; provided, however, that such plan shall

not include the provision of any service or assistance to the child and his or her family which is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. An order of placement shall include, at the least:

(i) a description of the visitation plan;

(ii) a direction that the respondent or respondents shall be notified of the planning conference or conferences to be held pursuant to subdivision three of section four hundred nine-e of this chapter, of their right to attend the conference, and of their right to have counsel or other representative or companion with them;

A copy of the court's order and the service plan shall be given to the respondent. The order shall also contain a notice that if the child remains in foster care for more than fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

Nothing in such order shall preclude either party to the instrument from exercising its rights under this section or under any other provision of law relating to the return of the care and custody of the child by the social services official to the parent, parents or guardian. Violation of such an order shall be subject to punishment pursuant to section seven hundred fifty-three of the judiciary law.

(f) For a child who has attained the age of fourteen, if the court grants the petition and approves an instrument executed pursuant to section three hundred eighty-four or three hundred eighty-four-a of this chapter and the transfer of custody and guardianship or care and custody of the child to a local social services official the court shall determine in its order the services and assistance needed to assist the child in learning independent living skills.

(g) (i) In any case in which an order has been issued pursuant to this section approving a foster care placement instrument, the social services official or authorized agency charged with custody or care of the child shall report the initial placement and any anticipated change in placement to the court and the attorneys for the parties, including the attorney for the child, forthwith, but not later than one business day following either the decision to make the initial placement or to

change the placement or the actual date the initial placement or placement change occurred, whichever is sooner. Such notice shall indicate the date that the placement change is anticipated to occur or the date the placement change occurred, as applicable. Provided, however, if such notice lists an anticipated date for the initial placement or placement change, the local social services district or authorized agency shall subsequently notify the court and attorneys for the parties, including the attorney for the child, of the date the placement or placement change occurred; such notice shall occur no later than one business day following the placement or placement change.

(ii) When a child whose legal custody was transferred to the commissioner of a local social services district in accordance with this section resides in a qualified residential treatment program, as defined in section four hundred nine-h of this chapter, and where such child's initial placement or change in placement in such program commenced on or after September twenty-ninth, two thousand twenty-one, upon receipt of notice required pursuant to subparagraph (i) of this paragraph and motion of the local social services district, the court shall schedule a court review to make an assessment and determination of such placement in accordance with section three hundred ninety-three of this chapter. Notwithstanding any other provision of law to the contrary, such court review shall occur no later than sixty days from the date the placement of the child in the qualified residential treatment program commenced.

(4) Notice. (a) Upon the filing of a petition pursuant to this section, the family court judge shall direct that service of a notice of the proceeding and a copy of the petition shall be made upon such persons and in such manner as the judge may direct. If the instrument executed by the parent, parents or guardian of a child consents to the jurisdiction of the family court over such proceeding, and waives service of the petition and notice of proceeding, then the family court judge may, in his discretion, dispense with service upon the consenting parent, parents or guardian, provided, however, that a waiver of service of process and notice of the proceeding by a parent or guardian who has transferred the care and custody of a child to an authorized agency, pursuant to section three hundred eighty-four-a of this chapter, shall be null and void and shall not be given effect by the court. Notice to any parent, parents or guardian who has not executed the instrument

shall be required.

(b) In the event the family court judge determines that service by publication is necessary and orders service by publication, service shall be made in accordance with the provisions of rule three hundred sixteen of the civil practice law and rules, provided, however, that a single publication of the summons or other process with a notice as specified herein in only one newspaper designated in the order shall be sufficient. In no event shall the whole petition be published. The petition shall be delivered to the person summoned at the first court appearance pursuant to section one hundred fifty-four-a of the family court act. The notice to be published with the summons or other process shall state the date, time, place and purpose of the proceeding.

(i) If the petition is initiated to transfer custody and guardianship of a child by an instrument executed pursuant to the provisions of section three hundred eighty-four of this chapter, the notice to be published shall also state that failure to appear may result, without further notice, in the transfer of custody and guardianship of the child to a social services official in this proceeding.

(ii) If the petition is initiated to transfer care and custody of a child by an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, the notice to be published shall also state that failure to appear may result, without further notice, in the transfer of care and custody of the child to a social services official in this proceeding.

(5) Hearing and waiver. The instrument may include a consent by the parent, parents or guardian to waiver of any hearing and that a determination may be made by the family court judge based solely upon the petition, and other papers and affidavits, if any, submitted to the family court judge, provided, however, that a waiver of hearing by a parent or guardian who has transferred the care and custody of a child to an authorized agency, pursuant to section three hundred eighty-four-a of this chapter, shall be effective only if such waiver was executed in an instrument separate from that transferring the child's care and custody. In any case where an effective waiver has been executed, the family court judge may dispense with a hearing, approve the instrument and the transfer of the custody and guardianship or care and custody of the child to the social services official and make the requisite

findings and determinations provided for in subdivision three of this section, if it appears to the satisfaction of the family court judge that the allegations in the petition are established sufficiently to warrant the family court judge to grant such petition, to make such findings and determination, and to issue such order.

In any case where a hearing is required, the family court judge, if the holding of an immediate hearing on notice is impractical, may forthwith, upon the basis of the instrument and the allegations of the petition, make a temporary finding that the parent, parents, or guardian of the child are unable to make adequate provision for the care, maintenance and supervision of such child in the child's own home and that the best interest and welfare of the child will be promoted by the removal of such child from such home and thereupon, the family court judge shall make a temporary order transferring the care and custody of such child to the social services official, and shall set the matter down for hearing on the first feasible date.

(6) Representation. In any case where a hearing is directed by the family court judge, he or she shall, pursuant to section two hundred forty-nine of the family court act, appoint an attorney to represent the child, who shall be admitted to practice law in the state of New York.

(7) Return of child. If an instrument provides for the return of the care and custody of a child by the local social services official to the parent, parents or guardian upon any terms and conditions or at any time, the local social services official shall comply with such terms of such instrument without further court order. Every order approving an instrument providing for the transfer of the care and custody of a child to a local social services official shall be served upon the parent, parents or guardian who executed such instrument in such manner as the family court judge may provide in such order, together with a notice of the terms and conditions under which the care and custody of such child may be returned to the parent, parents or guardian. If an instrument provides for the return of the care and custody of a child by the local social services official to the parent, parents or guardian without fixing a definite date for such return, or if the local social services official shall fail to return a child to the care and custody of the child's parent, parents or guardian in accordance with the terms of the

instrument, the parent, parents or guardian may seek such care and custody by motion for return of such child and order to show cause in such proceeding or by writ of habeas corpus in the supreme court. Nothing in this subdivision shall limit the requirement for a permanency hearing pursuant to article ten-A of the family court act.

(8) Appealable orders. Any order of a family court denying any petition of a local social services official filed pursuant to this section, or any order of a family court granting or denying any motion filed by a parent, parents or guardian for return of a child pursuant to this section, shall be deemed an order of disposition appealable pursuant to article eleven of the family court act.

(9) Duty of social services official. In the event that a family court judge denies a petition of a social services official for approval of an instrument, upon a finding that the welfare of the child would not be promoted by foster care, such social services official shall not accept or retain the care and custody as a public charge or custody and guardianship of such child, provided, however, that the denial by a family court judge of a petition of a social services official filed pursuant to this section shall not limit or affect the duty of such social services official to take such other action or offer such services as are authorized by law to promote the welfare and best interests of the child.

(10) Visitation rights; non-custodial parents and grandparents. (a) Where a social services official incorporates in an instrument visitation rights set forth in an order, judgment or agreement as described in paragraph (d) of subdivision two of section three hundred eighty-four-a of this chapter, such official shall make inquiry of the state central register of child abuse and maltreatment to determine whether or not the person having such visitation rights is a subject or another person named in an indicated report of child abuse or maltreatment, as such terms are defined in section four hundred twelve of this chapter, and shall further ascertain, to the extent practicable, whether or not such person is a respondent in a proceeding under article ten of the family court act whereby the respondent has been alleged or adjudicated to have abused or neglected such child.

(b) Where a social services official or the attorney for the child opposes incorporation of an order, judgment or agreement conferring

visitation rights as provided for in paragraph (e) of subdivision two of section three hundred eighty-four-a of this chapter, the social services official or attorney for the child shall apply for an order determining that the provisions of such order, judgment or agreement should not be incorporated into the instrument executed pursuant to such section. Such order shall be granted upon a finding, based on competent, relevant and material evidence, that the child's life or health would be endangered by incorporation and enforcement of visitation rights as described in such order, judgment or agreement. Otherwise, the court shall deny such application.

(c) Where visitation rights pursuant to an order, judgment or agreement are incorporated in an instrument, the parties may agree to an alternative schedule of visitation equivalent to and consistent with the original or modified visitation order, judgment, or agreement where such alternative schedule reflects changed circumstances of the parties and is consistent with the best interests of the child. In the absence of such an agreement between the parties, the court may, in its discretion, upon application of any party or the child's attorney, order an alternative schedule of visitation, as described herein, where it determines that such schedule is necessary to facilitate visitation and to protect the best interests of the child.

(d) The order providing an alternative schedule of visitation shall remain in effect for the length of the placement of the child as provided for in such instrument unless such order is subsequently modified by the court for good cause shown. Whenever the court makes an order denying or modifying visitation rights pursuant to this subdivision, the instrument described in section three hundred eighty-four-a of this chapter shall be deemed amended accordingly.

(11) Siblings, placement and visitation. (a) In reviewing any petition brought under this section, the court shall inquire if the social services official has arranged for the placement of the child who is the subject of the petition with any minor siblings or half-siblings who are placed in care or, if such children have not been placed together, whether such official has arranged for regular visitation and other forms of regular communication between such child and such siblings.

(b) If the court determines that the subject child has not been placed with his or her minor siblings or half-siblings who are in care, or that

regular visitation and other forms of regular communication between the subject child and his or her minor siblings or half-siblings has not been provided or arranged for, the court may direct such official to provide or arrange for such placement or regular visitation and communication where the court finds that such placement or visitation and communication is in the child's and his or her siblings' or half-siblings' best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's and his or her siblings' or half-siblings' best interests unless such placement or visitation and communication would be contrary to the child's or his or her siblings' or half-siblings' health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

(c) If a child placed in foster care pursuant to this section is not placed together or afforded regular communication with his or her siblings, the child, through his or her attorney or through a parent on his or her behalf, may move for an order regarding placement or communication. The motion shall be served upon: (i) the parent or parents in the proceeding under this section; (ii) the local social services official having the care of the child; (iii) other persons having care, custody and control of the child, if any; (iv) the parents or other persons having care, custody and control of the siblings to be visited or with whom contact is sought; (v) such sibling himself or herself if ten years of age or older; and (vi) such sibling's attorney, if any. Upon receipt of a motion filed under this paragraph the court shall determine, after giving notice and an opportunity to be heard to the persons served, whether visitation and contact would be in the best interests of the child and his or her siblings. The court may order that the child be placed together with or have regular communication with his or her siblings if the court determines it to be in the best interests of the child and his or her siblings.

(d) For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent.

(12) For the purposes of this section, aggravated circumstances means where a child has been either severely or repeatedly abused, as defined

in subdivision eight of section three hundred eighty-four-b of this chapter; or where a child has subsequently been found to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section one thousand twelve of the family court act, within five years after return home following placement in foster care as a result of being found to be a neglected child, as defined in subdivision (f) of section one thousand twelve of the family court act, provided that the respondent or respondents in each of the foregoing proceedings was the same; or where the court finds by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission could eliminate the requirement that the local department of social services provide reunification services to the parent, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services independently or otherwise prepare for the child's return home; provided, however, that if the court finds that adequate justification exists for the failure to engage in or secure such services, including but not limited to a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure shall not constitute an aggravated circumstance; or where a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the child be safe from physical injury and cared for in an appropriate manner.

*** § 358-b. Limitations on state reimbursement for foster care.** In the event that a petition for approval of an instrument and the transfer of the custody and guardianship or care and custody of a child is filed within thirty days following removal of the child from his home and diligently pursued pursuant to section three hundred fifty-eight-a of this title, state reimbursement shall not be denied for expenditures

made by a social services district for the care and maintenance of such a child away from his home prior to denial of such petition by a family court judge solely by reason of such denial.

* NB Effective until June 30, 2027

* § 358-b. Limitations on state reimbursement for foster care. In the event that a petition for approval of an instrument and the transfer of the custody and guardianship or care and custody of a child is filed within thirty days following removal of the child from his home and diligently pursued pursuant to section three hundred fifty-eight-a of this chapter, state reimbursement shall not be denied pursuant to section one hundred fifty-three-d of this chapter, for expenditures made by a social services district for the care and maintenance of such a child away from his home prior to denial of such petition by a family court judge solely by reason of such denial.

* NB Effective June 30, 2027

§ 358-c. Rules of court. The administrative board of the judicial conference shall prepare, by August first, nineteen hundred seventy-three, rules of court for the efficient and just administration of the judicial proceedings authorized by section three hundred fifty-eight-a of this chapter and such rules may be amended by the administrative board from time to time. The state administrator shall prescribe forms for petitions, notices and orders authorized by section three hundred fifty-eight-a, and may authorize courts determining such proceedings to submit information to the department in a manner and at such times as the administrative board may prescribe. Nothing in this section shall be construed to limit the authority of the state board of social welfare.

§ 360. Real property of legally responsible relatives. The ownership of real property by an applicant or applicants, recipient or recipients who is or are legally responsible relatives of the child or children for whose benefit the application is made or the aid is granted, whether such ownership be individual or joint as tenants in common, tenants by the entirety or joint tenants, shall not preclude the granting of family

assistance or the continuance thereof if he or they are without the necessary funds to maintain himself, herself or themselves and such child or children.

TITLE 11

MEDICAL ASSISTANCE FOR NEEDY PERSONS

- Section 363. Declaration of objects.
- 363-a. Federal aid; state plan.
 - 363-b. Agreements for federal determination of eligibility of aged, blind and disabled persons for medical assistance.
 - 363-c. Medicaid management.
 - 363-d. Provider compliance program.
 - 363-e. Medicaid plan, applications for waivers and plan amendments; public disclosure.
 - 363-f. Electronic visit verification for personal care and home health providers.
364. Responsibility for standards.
- 364-a. Cooperation of state departments.
 - 364-b. Residential and medical care placement demonstration projects.
 - 364-c. National long term care channeling demonstration project.
 - 364-d. Medical assistance research and demonstration projects.
 - 364-e. Aid to families with dependent children homemaker/home health aide demonstration projects.
 - 364-f. Primary care case management programs.
 - 364-g. Medical assistance capitation rate demonstration project.
 - 364-h. Foster family care demonstration programs for elderly or disabled persons.
 - 364-i. Medical assistance presumptive eligibility program.
 - 364-j. Managed care programs.
 - 364-j-1. Transitional supplemental payments.
 - 364-j-2. Transitional supplemental payments.
 - 364-jj. Special advisory review panel on Medicaid managed care.

- 364-kk. Condition of Participation.
- 364-m. Statewide patient centered medical home program.
- 364-n. Diabetes and chronic disease self-management pilot program.
- 365. Responsibility for assistance.
- 365-a. Character and adequacy of assistance.
- 365-b. Local medical plans: professional directors.
- 365-c. Medical advisory committee.
- 365-d. Medicaid evidence based benefit review advisory committee.
- 365-e. Optional or continued membership in entities offering comprehensive health services plans.
- 365-f. Consumer directed personal assistance program.
- 365-g. Utilization review for certain care, services and supplies.
- 365-h. Provision and reimbursement of transportation costs.
- 365-j. Advisory opinions.
- 365-k. Provision of prenatal care services.
- 365-l. Health homes.
- 365-m. Administration and management of behavioral health services.
- 365-n. Department of health assumption of program administration.
- 365-o. Provision and coverage of services for living organ donors.
- 365-p. Doula for Medicaid.
- 366. Eligibility.
- 366-a. Applications for assistance; investigations; reconsideration.
- 366-b. Penalties for fraudulent practices.
- 366-c. Treatment of income and resources of institutionalized persons.
- 366-d. Medical assistance provider; prohibited practices.
- 366-e. Certified home health agency medicare billing.
- 366-f. Persons acting in concert with a medical assistance provider; prohibited practices.
- 366-g. Newborn enrollment for medical assistance.

- 366-h. Automated system; established.
- 366-i. Long-term care financing demonstration program.
- 367. Authorization for hospital care.
- 367-a. Payments; insurance.
- 367-b. Medical assistance information and payment system.
- 367-c. Payment for long term home health care programs.
- 367-d. Personal care need determination.
- 367-e. Payment for AIDS home care programs.
- 367-f. Partnership for long term care program.
- 367-g. Authorization and provision of personal emergency response services.
- 367-h. Payment for assisted living programs.
- 367-i. Personal care services provider assessments.
- 367-o. Health insurance demonstration programs.
- 367-p. Responsibilities of local districts for personal care services, home care services and private duty nursing.
- 367-p*2. Payment for limited home care services agencies.
- 367-q. Personal care services worker recruitment and retention program.
- 367-r. Private duty nursing services worker recruitment and retention program.
- 367-s. Long term care demonstration program.
- 367-s*2. Emergency medical transportation services.
- 367-t. Payment for emergency physician services.
- 367-u. Payment for home telehealth services.
- 367-v. County long-term care financing demonstration program.
- 367-w. Health care and mental hygiene worker bonuses.
- 367-x. Payment for violence prevention programs.
- 367-y. Reimbursement for treatment in place and transportation to alternative health care settings.
- 368. Quarterly estimates.
- 368-a. State reimbursement.
- 368-b. State reimbursement to local health districts; chargebacks.
- 368-c. Audit of state rates of payment to providers of health care services.

- 368-d. Reimbursement to public school districts and state operated/state supported schools which operate pursuant to article eighty-five, eighty-seven or eighty-eight of the education law.
- 368-e. Reimbursement to counties for pre-school children with handicapping conditions.
- 368-f. Reimbursement of costs under the early intervention program.
- 369. Application of other provisions.

§ 363. Declaration of objects. Medical assistance for needy persons is hereby declared to be a matter of public concern and a necessity in promoting the public health and welfare and for promoting the state's goal of making available to everyone, regardless of race, age, national origin or economic standing, uniform, high-quality medical care. In furtherance of such goal, a comprehensive program of medical assistance for needy persons is hereby established to operate in a manner which will assure a uniform high standard of medical assistance throughout the state. In carrying out this program every effort shall be made to promote maximum public awareness of the availability of, and procedure for obtaining, such assistance, and to facilitate the application for, and the provision of such medical assistance.

§ 363-a. Federal aid; state plan. 1. The department of health shall submit and maintain a plan for medical assistance, as required by title XIX, or any successor title, of the federal social security act, to the federal department of health and human services for approval pursuant to the provisions of such law and shall act as the single state agency to supervise the administration of the plan in this state. The department of health shall act for the state in any negotiations relative to the submission and approval of such plan and any amendments thereto and it may make such arrangements, not inconsistent with law, as may be required by or pursuant to federal law to obtain and retain such approval and to secure for the state the benefits of the provisions of such law.

2. The department of health shall make such regulations, not inconsistent with law, as may be necessary to implement this title.

3. The department of health shall make reports to the federal department of health and human services as from time to time may be required by such federal department.

4. The department of taxation and finance shall accept and receive any and all grants of money awarded to the state under title XIX, or any successor title, of the federal social security act. All moneys so received shall be deposited by the department of taxation and finance in a special fund or funds and shall be used by the state exclusively for medical assistance and the administration thereof under the provisions of this title. Such moneys shall be paid from such fund or funds on audit and warrant of the comptroller on vouchers of or certification by the department of health.

§ 363-b. Agreements for federal determination of eligibility of aged, blind and disabled persons for medical assistance. 1. In order to avoid costly, duplicative administrative responsibility, the department on behalf of the state may, with the approval of the director of the budget, enter into an agreement with the secretary of health, education and welfare for the secretary to determine eligibility, commencing on or after the first day of January nineteen hundred seventy-four, for medical assistance in the case of aged, blind or disabled persons, pursuant to the provisions of the social security act authorizing such agreements and subject to the requirements of this title. Such agreement shall include provision for payments of one-half the cost of such services to be made to such secretary.

2. Payments required to be made by the department to the secretary of health, education and welfare for his services under such agreement shall be borne by and shared equally between the social services districts to which such payments are attributable and the state for any period commencing on or after the first day of January nineteen hundred

seventy-four.

§ 363-c. Medicaid management. 1. The commissioner of the department periodically shall convene, but not less than quarterly and no more than monthly, meetings of the directors and commissioners of all state agencies and departments receiving general fund appropriations for the purpose of state matching funds for medicaid services and appropriate representation of local departments of social services. The purpose of these meetings is to identify, without limitation:

- (a) methods to contain the growth of medicaid spending;
- (b) methods to improve the quality of and recipient satisfaction with medicaid state agency and department services;
- (c) opportunities for consolidation and methods to improve the efficiency and effectiveness of existing service delivery;
- (d) opportunities for education and prevention; and
- (e) the collective priority of critical needs for the medicaid population.

2. The department annually shall compile the results of these meetings and provide them to the governor, the senate finance committee, the assembly ways and means committee, the senate health committee, the assembly health committee, the senate social services, children and families committee, and the assembly social services committee.

3. By December thirty-first of each year, the department shall submit to the governor, the senate finance committee, the assembly ways and means committee, the senate health committee, the assembly health committee, the senate social services, children and families committee, and the assembly social services committee medicaid expenditures made to other state agencies in the preceding state fiscal year. The report shall include, but is not limited to:

- (a) amounts paid to each agency according to category of service; and
- (b) rates paid to each state agency and the associated methodology used in developing those rates.

4. Notwithstanding any laws or regulations to the contrary, all social

services districts, providers and other recipients of medical assistance program funds shall make available to the commissioner or the director of the division of budget in a prompt fashion all fiscal and statistical records and reports, other contemporaneous records demonstrating their right to receive payment, and all underlying books, records, documentation and reports, which may be requested by the commissioner or the director of the division of the budget as may be determined necessary to manage and oversee the Medicaid program provided however, any personally identifying information obtained pursuant to this subdivision shall remain confidential and shall be used solely for the purposes of this subdivision.

§ 363-d. Provider compliance program. 1. The legislature finds that medical assistance providers may be able to detect and correct payment and billing mistakes and fraud if required to develop and implement compliance programs. It is the purpose of such programs to organize provider resources to resolve payment discrepancies and detect inaccurate billings, among other things, as quickly and efficiently as possible, and to impose systemic checks and balances to prevent future recurrences. The legislature accordingly declares that it is in the public interest that providers within the medical assistance program implement compliance programs. The legislature also recognizes the wide variety of provider types in the medical assistance program and the need for compliance programs that reflect a provider's size, complexity, resources, and culture. For a compliance program to be effective, it must be designed to be compatible with the provider's characteristics. At the same time, however, the legislature determines that there are key components that must be included in every compliance program and such components should be required if a provider is to be a medical assistance program participant. Accordingly, the provisions of this section require providers to adopt effective compliance program elements, and make each provider responsible for implementing such a program appropriate to its characteristics.

2. Every provider of medical assistance program items and services that is subject to subdivision four of this section shall adopt and

implement a compliance program. The office of Medicaid inspector general shall create and make available on its website guidelines, which may include a model compliance program, that reflect the requirements of this section. Such compliance programs shall meet the requirements included in this subdivision as a condition of payment from the medical assistance program. The compliance program required pursuant to this section may be a component of more comprehensive compliance activities by the medical assistance provider so long as the requirements of this section are met. Every provider shall adopt and implement an effective compliance program, which shall include measures that prevent, detect, and correct non-compliance with medical assistance program requirements as well as measures that prevent, detect, and correct fraud, waste, and abuse. The compliance program shall include the following requirements:

(a) Written policies, procedures, and standards of conduct that:

(1) articulate the organization's commitment to comply with all applicable federal and state standards;

(2) describe compliance expectations as embodied in the standards of conduct;

(3) implement the operation of the compliance program;

(4) provide guidance to employees and others on dealing with potential compliance issues;

(5) identify how to communicate compliance issues to appropriate compliance personnel;

(6) describe how potential compliance issues are investigated and resolved by the organization;

(7) include a policy of non-intimidation and non-retaliation for good faith participation in the compliance program, including but not limited to reporting potential issues, investigating issues, conducting self-evaluations, audits and remedial actions, and reporting to appropriate officials; and

(8) all requirements listed under 42 U.S.C.1396-a(a)(68).

(b) Designation of a compliance officer and a compliance committee who report directly and are accountable to the organization's chief executive or other senior management.

(c)(1) Each provider shall establish and implement effective training and education for its compliance officer and organization employees, the chief executive and other senior administrators, managers and governing

body members.

(2) Such training and education shall occur at a minimum annually and shall be made a part of the orientation for a new employee and new appointment of a chief executive, manager, or governing body member.

(d) Establishment and implementation of effective lines of communication, ensuring confidentiality, between the compliance officer, members of the compliance committee, the organization's employees, managers and governing body, and the organizations first tier, downstream, and related entities. Such lines of communication shall be accessible to all and allow compliance issues to be reported including a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified.

(e) Well-publicized disciplinary standards through the implementation of procedures which encourage good faith participation in the compliance program by all affected individuals.

(f) Establishment and implementation of an effective system for routine monitoring and identification of compliance risks. The system should include internal monitoring and audits and, as appropriate, external audits, to evaluate the organization's compliance with the medical assistance program requirements and the overall effectiveness of the compliance program.

(g) Establishment and implementation of procedures and a system for promptly responding to compliance issues as they are raised, investigating potential compliance problems as identified in the course of self-evaluations and audits, correcting such problems promptly and thoroughly to reduce the potential for recurrence, and ensure ongoing compliance with the medical assistance programs requirements.

3. Upon enrollment in the medical assistance program, a provider shall certify to the department that the provider satisfactorily meets the requirements of this section. Additionally, the commissioner of health and Medicaid inspector general shall have the authority to determine at any time if a provider has a compliance program that satisfactorily meets the requirements of this section.

(a) A compliance program that is accepted by the federal department of health and human services office of inspector general and remains in compliance with the standards promulgated by such office shall be deemed

in compliance with the provisions of this section, so long as such plans adequately address medical assistance program risk areas and compliance issues.

(b) A compliance program that meets Federal requirements for managed care provider compliance programs, as specified in the contract or contracts between the department and the Medicaid managed care provider shall be deemed in compliance with the provisions in this section, so long as such programs adequately address medical assistance program risk areas and compliance issues. For purposes of this section, a managed care provider is as defined in paragraph (c) of subdivision one of section three hundred sixty-four-j of this chapter, and includes managed long term care plans.

(c) In the event that the commissioner of health or the Medicaid inspector general finds that the provider does not have a satisfactory program within ninety days after the effective date of the regulations issued pursuant to subdivision four of this section, the provider may be subject to any sanctions or penalties permitted by federal or state laws and regulations, including revocation of the provider's agreement to participate in the medical assistance program.

(d)(1) In the first instance of the Medicaid inspector general's determination that the provider, including a Medicaid managed care provider, that has failed to adopt and implement a compliance program which satisfactorily meets the requirements of this section, the Medicaid inspector general may impose a monetary penalty of five thousand dollars per calendar month, for a maximum of twelve calendar months against a provider, including Medicaid managed care providers.

(2) The Medicaid inspector general may impose a monetary penalty of up to ten thousand dollars per calendar month, for a maximum of twelve calendar months against a provider, including a Medicaid managed care provider, that has failed to adopt and implement a compliance program which satisfactorily meets the requirements of this section, if a penalty was previously imposed under subparagraph one of this paragraph within the previous five years.

(e) A provider, including a Medicaid managed care provider, against whom a monetary penalty is imposed pursuant to paragraph (d) of this subdivision shall be entitled to notice and an opportunity to be heard, including the right to request a hearing pursuant to section twenty-two

of this chapter.

4. Providers that shall be subject to the provisions of this section include, but are not limited to:

(a) those subject to the provisions of articles twenty-eight and thirty-six of the public health law;

(b) those subject to the provisions of articles sixteen and thirty-one of the mental hygiene law;

(c) notwithstanding the provisions of section forty-four hundred fourteen of the public health law, managed care providers, as defined in section three hundred sixty-four-j of this title and includes managed long-term care plans; and

(d) other providers of care, services and supplies under the medical assistance program for which the medical assistance program is a substantial portion of their business operations.

5. (a) The Medicaid inspector general, in consultation with the department of health, shall promulgate any regulations necessary to implement this section.

(b) The Medicaid inspector general shall accept programs and processes implemented pursuant to section forty-four hundred fourteen of the public health law as satisfying the obligations of this section and the regulations promulgated thereunder when such programs and processes incorporate the objectives contemplated by this section.

6. (a) If a person has received an overpayment under the medical assistance program, the person shall:

(1) report and return the overpayment to the department; and

(2) notify the Medicaid inspector general in writing of the reason for the overpayment.

(b) An overpayment shall be reported and returned under paragraph (a) of this subdivision by the later of: (1) the date which is sixty days after the date on which the overpayment was identified; or (2) the date any corresponding cost report is due, if applicable. A person has identified an overpayment when the person has or should have through the exercise of reasonable diligence, determined that the person has received an overpayment and quantified the amount of the overpayment. A

person should have determined that the person received an overpayment and quantified the amount of the overpayment if the person fails to exercise reasonable diligence and the person in fact received an overpayment.

(c) The deadline for returning overpayments shall be tolled when the following occurs:

(1) the Medicaid inspector general acknowledges receipt of a submission to the Medicaid inspector general's self-disclosure program under subdivision seven of this section, and shall remain tolled until such time as a self-disclosure and compliance agreement, pursuant to subdivision seven of this section is fully executed, the person withdraws from the self-disclosure program, the person repays the overpayment and any interest due, or the person is removed from the self-disclosure program by the Medicaid inspector general; or

(2) in the absence of a finding of fraud a person may repay an overpayment through installment payments as described in subdivision seven of this section and shall remain tolled until such time as the provider repays the overpayment and any interest due, the Medicaid inspector general rejects the installment payment schedule requested by the provider, or the provider fails to comply with the terms of the installment payment schedule.

(d) Any overpayment retained by a person after the deadline for reporting and returning the overpayment under paragraph (b) of this subdivision shall be subject to a monetary penalty pursuant to subdivision four of section one hundred forty-five-b of this article.

(e) For purposes of this subdivision, "person" means a provider of services or supplies, managed care provider, as defined in paragraph (b) of subdivision one of section three hundred sixty-four-j of this title and includes managed long-term care plans, and does not include recipients of the medical assistance program.

7. Self-disclosure program. (a) Notwithstanding the provisions of any other law to the contrary, there is hereby established a voluntary self-disclosure program to be administered by the Medicaid inspector general, in consultation with the commissioner, for all persons described in this section owing any overpayment to the medical assistance program.

(b) For purposes of this subdivision, "person" means any person providing services or receiving payment under the medical assistance program, a managed care provider as defined in paragraph (b) of subdivision one of section three hundred sixty-four-j of this title, including managed long-term care plans, and any subcontractors or network providers thereof.

(c) In order to be eligible to participate in the self-disclosure program, a person shall satisfy the following conditions:

(1) the person is not currently under audit, investigation or review by the Medicaid inspector general, unless the overpayment and the related conduct being disclosed does not relate to the Medicaid inspector general's audit, investigation or review;

(2) the person is disclosing an overpayment and related conduct that the Medicaid inspector general has not determined, calculated, researched or identified at the time of the disclosure;

(3) the overpayment and related conduct is reported by the deadline specified in subdivision six of this section; and

(4) the person is not currently a party to any criminal investigation being conducted by the deputy attorney general for the Medicaid fraud control unit or an agency of the United States government or any political subdivision thereof.

(d) Notwithstanding subdivision three of section one hundred forty-five-b of this article, the Medicaid inspector general may waive interest on any overpayment reported, returned, and explained by an eligible person under this subdivision. Furthermore, an eligible person's good faith participation in the self-disclosure program may be considered as a mitigating factor in the determination of an administrative enforcement action.

(e) To participate in the self-disclosure program, an eligible person shall apply by submitting a self-disclosure statement in the form and manner prescribed by the Medicaid inspector general. The statement shall contain all the information required by the Medicaid inspector general to effectively administer the self-disclosure program.

(f) (1) The eligible person shall pay the overpayment amount determined by the Medicaid inspector general to the department within fifteen days of the Medicaid inspector general notifying the person of the amount due.

(2) In the event the Medicaid inspector general is satisfied that the person cannot make immediate full payment of the disclosed overpayment, the Medicaid inspector general may permit the person to repay the overpayment and any interest due through installment payments. The Medicaid inspector general may require a financial disclosure statement setting forth information concerning the person's current assets, liabilities, earnings, and other financial information before entering into an installment payment plan with the person.

(3) If the person and the overpayment are eligible under the self-disclosure program, the Medicaid inspector general shall be authorized to enter into a self-disclosure and compliance agreement with the person. The self-disclosure and compliance agreement shall be in a form to be established by the Medicaid inspector general and include such terms as the Medicaid inspector general shall require for the repayment of the person's disclosed overpayment and enable and require the person to comply with the requirements of the medical assistance program in the future. The person shall execute the self-disclosure and compliance agreement within fifteen days of receiving said agreement from the Medicaid inspector general, or such other timeframe permitted by the Medicaid inspector general, provided however, that such other period is not less than fifteen days.

(4) If the person provides false material information or omits material information in his or her submissions to the Medicaid inspector general, or attempts to defeat or evade an overpayment due pursuant to the self-disclosure and compliance agreement executed under this subdivision, or fails to comply with the terms of the self-disclosure and compliance agreement, or refuses to execute the self-disclosure and compliance agreement in the timeframes specified under this section, such agreement shall be deemed rescinded and the provider's participation in the self-disclosure program terminated.

(5) A person against whom a self-disclosure and compliance agreement is rescinded and participation in the self-disclosure program is terminated pursuant to subparagraph four of this paragraph shall be entitled to notice.

(g) The Medicaid inspector general, in consultation with the commissioner, may promulgate regulations, issue forms and instructions, and take any and all other actions necessary to implement the provisions

of the self-disclosure program established under this section to maximize public awareness and participation in such program.

§ 363-e. Medicaid plan, applications for waivers and plan amendments; public disclosure. 1. The commissioner of health shall post on the department of health internet website in as timely a manner as practical the entirety of the state's plan for medical assistance as required by title XIX of the federal Social Security Act, or its successor, and every approved amendment and change to the plan.

2. The commissioner of health shall post on the department of health internet website in as timely a manner as practical: every application for a federal waiver and every proposed state plan amendment, relating to the state's plan for medical assistance, submitted to the federal department of health and human services, or any successor agency or part thereof.

§ 363-f. Electronic visit verification for personal care and home health providers. The commissioner, in consultation with the Medicaid inspector general, is hereby authorized to promulgate regulations to implement the electronic visit verification provisions of subsection (1) of section 1903 of the federal social security act.

§ 364. Responsibility for standards. To assure that the medical care and services rendered pursuant to this title are of the highest quality and are available to all who are in need, the responsibility for establishing and maintaining standards for medical care and eligibility shall be as follows:

1. The department of social services shall be responsible for
(a) determining eligibility for care and services pursuant to this title and consistent with standards established by the commissioner of the department of health and, as authorized by such commissioner, for hearing appeals and making findings and recommendations relating

thereto;

(b) auditing payments to providers of care, services and supplies under the medical assistance program; and

(c) publishing and distributing to the public, from time to time and in consultation with the department of health, information relating to the medical assistance program, to promote maximum public awareness of the availability of, and the procedure for obtaining, such assistance.

2. The department of health shall be responsible for

(a) establishing and maintaining standards for all hospital and related services pursuant to article twenty-eight of the public health law, and for all medical care and services furnished in an institution operated by the department of health pursuant to other provisions of the public health law;

(b) establishing and maintaining standards for all non-institutional health care and services rendered pursuant to this title, including but not limited to procedural standards relating to the revocation, suspension, limitation or annulment of qualification for participation as a provider of care and services, on a determination that the provider is an incompetent provider of specific services or has exhibited a course of conduct which is either inconsistent with program standards and regulations or which exhibits an unwillingness to meet such standards and regulations, or is a potential threat to the public health or safety pursuant to section two hundred six of the public health law;

(c) reviewing and approving local social services medical plans;

(d) establishing by regulation requirements for a uniform system of reports relating to the quality of medical care and services furnished pursuant to this title;

(e) reviewing the quality and availability of medical care and services furnished under local social services medical plans, to assure that the quality of medical care and services is in the best interest of the recipients;

(f) providing consultative services to hospitals, nursing homes, home health agencies, clinics, laboratories, and such other institutions as the secretary of the federal department of health and human services may specify in order to assist them: to qualify for payments under the provisions of this title and title XIX of the federal social security

act; in providing information needed to determine such payments; in establishing and maintaining such fiscal records as may be necessary for the proper and efficient administration of medical assistance;

(g) establishing standards of eligibility for medical assistance, consistent with the provisions of this title; and

(h) making policy, rules and regulations for maintaining a system of hearings for applicants and recipients of medical assistance adversely affected by the actions of the department or social service districts and for making final administrative determinations and issuing final decisions concerning such matters.

3. Each office within the department of mental hygiene shall be responsible for establishing and maintaining standards for medical care and services received in institutions operated by it or subject to its supervision pursuant to the mental hygiene law.

4. The public health and health planning council shall be responsible for establishing and maintaining qualifications for persons employed by social services districts as professional directors.

§ 364-a. Cooperation of state departments. 1. There shall be such cooperative arrangements, between and among the department of health and other state departments and agencies as shall be necessary to assure that the purposes and objectives of this title will be effectively accomplished. The commissioner of the department of health shall have the authority to delegate responsibility under this title to other state departments and agencies and to enter into memoranda of understanding as may be necessary to carry out the provisions of this title.

2. Notwithstanding any inconsistent provision of law, the department of health shall enter into a cooperative agreement with the office of mental health which shall;

(i) provide for the office of mental health, on or after the date of the agreement, to administer and supervise the medical care, health care, habilitative, rehabilitative and maintenance services provided pursuant to this title at residential treatment facilities for children

and youth licensed by the office of mental health pursuant to article thirty-one of the mental hygiene law, and

(ii) authorize the office of mental health to perform such administration and supervision, either directly or by contract, as the office of mental health may from time-to-time determine. On or after the effective date of such agreement, all of the functions provided for in this title for the administration and supervision of medical care, health care, habilitative, rehabilitative and maintenance services provided hereunder by residential treatment facilities for children and youth licensed by the office of mental health pursuant to article thirty-one of the mental hygiene law shall be performed by the office of mental health to the extent permitted by applicable federal law and to the extent that federal reimbursement for such care and services is not impaired. A cooperative agreement previously entered into by the department of social services pursuant to this subdivision shall continue in effect until modified or terminated by the department of health.

* 3. Notwithstanding any inconsistent provision of law, the department of health shall enter into a cooperative agreement with the office of mental health which shall:

(i) provide for the office of mental health, on or after the date of the agreement, to administer and supervise the medical care, health care, habilitative, rehabilitative and maintenance services provided pursuant to this title at comprehensive psychiatric emergency programs licensed by the office of mental health pursuant to article thirty-one of the mental hygiene law, and

(ii) authorize the office of mental health to perform such administration and supervision, either directly or by contract, as the office of mental health may determine to be necessary. On or after the effective date of such agreement, all of the functions provided for in this title for the administration and supervision of medical care, health care, habilitative, rehabilitative and maintenance services provided at comprehensive psychiatric emergency programs licensed by the office of mental health pursuant to article thirty-one of the mental hygiene law shall be performed by the office of mental health to the extent permitted by federal law and to the extent that federal reimbursement for such care and services is not impaired. A cooperative

agreement previously entered into by the department of social services pursuant to this subdivision shall continue in effect until modified or terminated by the department of health.

* NB Repealed July 1, 2027

*** § 364-b. Residential and medical care placement demonstration projects.** 1. Notwithstanding any inconsistent provisions of this chapter or any other law to the contrary, social services districts are hereby authorized to conduct or participate in time-limited demonstration projects for the purpose of demonstrating the feasibility of reducing medical assistance expenditures for care in residential health facilities by utilizing medical assistance funds for: (a) conducting initial assessments of, and performing case management functions, for (i) persons financially eligible for medical assistance pursuant to this title who request long term care services, and (ii) persons whether or not otherwise financially eligible for medical assistance who seek care in or discharge from a residential health care facility or a congregate care facility as described in section two hundred nine of this chapter, and (b) providing social services and medical supplies determined to be necessary and appropriate as a result of assessments conducted pursuant to paragraph (a) hereof, to those persons participating in an approved project who are otherwise eligible to receive medical assistance, whether or not such services or supplies are authorized to be provided under this title; provided, however, that no such additional services or supplies provided hereunder shall be subject to state reimbursement unless prior approval to provide such services or supplies to persons eligible for medical assistance has been granted by the department. Such demonstration projects may be conducted or participated in by a social services district only in accordance with a plan submitted to the department on or before the thirtieth day of June, nineteen hundred seventy-seven, and only to the extent and period for which such plan has been approved or from time to time extended by the commissioner.

2. Any plan submitted pursuant to this section shall provide that in any case in which it is determined by an assessment conducted in

accordance with such a project that placement in a skilled nursing facility or an intermediate care facility would be appropriate, such placement shall be subject to review and approval by the department of health provided, however, that the commissioner of health may delegate preplacement assessment review function to such a project. In addition, any plan submitted pursuant to this section shall include a description of any assessment methodology utilized in determining the appropriateness of placements in skilled nursing facilities or intermediate care facilities and any such plan may be approved by the commissioner only after such methodology has been submitted to the department of health for its review and comment.

3. Notwithstanding any inconsistent provision of law to the contrary, expenditures made in connection with an approved residential and medical care placement demonstration project for assessments, case management and social services and medical supplies authorized to be provided by this title or approved by the department, shall be subject to state reimbursement under section three hundred sixty-eight-a of the social services law in accordance with a schedule of maximum reimbursable amounts established by the department for such services and supplies.

4. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the commissioner may, subject to the approval of the director of the budget, approve such demonstration projects and apply for the appropriate waivers under federal law and regulation and may waive: (a) any provision of this title or regulation of the department as may be necessary to make medical assistance funds available for initial assessment and performing case management functions for persons participating in such approved projects without regard to their eligibility to participate in the medical assistance program and when appropriate, providing additional approved social services and medical supplies, not otherwise authorized under this title, to persons participating in such approved projects who are otherwise eligible to participate in the medical assistance program; and (b) such department regulations relating thereto as may be necessary to enable a social services district to carry out such project.

5. The commissioner shall require that a final independent evaluation be made of any demonstration project approved and conducted hereunder in a form mutually agreed upon by him and the state commissioner of health, and shall provide copies of such report to the governor and to the legislature. In addition the commissioner shall submit annual interim reports on the progress of each project to the governor and legislature by the first day of February of each year.

* NB Expired September 30, 1986

*** § 364-c. National long term care channeling demonstration project.**

1. Notwithstanding any inconsistent provisions of this chapter or any other law to the contrary, the Rensselaer county social services district is hereby authorized to participate in the national long term care channeling demonstration project, for the purposes of demonstrating: (a) the efficiency and effectiveness of community based long term care services; (b) the viability of transferring the responsibility for determining the amount, duration and scope of services to be provided from the local social services agency to the channeling agency; and (c) various methods of delivering services, including services or supplies not authorized to be provided under this title; provided, however, that no such additional services or supplies provided hereunder shall be subject to state reimbursement unless the department approves provision of such services or supplies to persons eligible for medical assistance, and federal financial participation is available for such additional services or supplies; and provided further, that the social services district may only participate in such demonstration in accordance with a plan submitted to the departments of social services and health, and the division of the budget, and only to the extent and period for which such plan has been approved by those departments and division.

2. (a) Notwithstanding any inconsistent provision of law to the contrary, expenditures made in connection with the national long term care channeling demonstration project for social and health services and medical supplies authorized to be provided by this section and approved by the department, shall be subject to state reimbursement under section

three hundred sixty-eight-a of this title in accordance with a schedule of maximum reimbursable amounts approved by the department and the division of budget for such services and supplies for the project.

(b) Notwithstanding any inconsistent provision of law to the contrary, the commissioner may authorize the Rensselaer county social services district to pay for services and supplies provided pursuant to the demonstration project.

3. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the commissioner may, subject to the approval of the director of the budget, approve such a demonstration project and apply for appropriate waivers under federal law and regulation and may waive any provision of this title or regulation of the department as may be necessary to enable the social services district to participate in the demonstration project, and to make medical assistance funds available for such project.

4. The commissioner shall provide that a final evaluation be made of the national long term care channeling demonstration project in Rensselaer county approved and conducted hereunder in a form mutually agreed upon by such commissioner, the state commissioner of health, and the director of the state office for the aging, and shall provide copies of such report to the governor and to the legislature. In addition, the director of the state office for the aging shall submit annual interim reports on the progress of the project to the governor and legislature by the first day of February of each year.

* NB Expired December 31, 1985

*** § 364-d. Medical assistance research and demonstration projects. 1.** The department is authorized to sponsor, conduct and participate in the following research and demonstration projects: "Eldercare: A Social Health Maintenance Organization", "New York State Alcoholism Services Demonstration", and "Physician Reimbursement and Continuing Care Under Medicaid", for the purpose of testing the use of innovative administrative techniques, new reimbursement methods, and changes in the scope of benefits, so as to promote a more efficient utilization of

health resources and the containment of medical assistance program costs. Such demonstration projects may be conducted in one or more social services districts or portions of such districts.

2. (a) Social services districts shall be required to participate in the operation of such research and demonstration projects as the department may approve. Social services districts shall cooperate with the department in the conduct of such projects whenever the department shall request or require such participation or cooperation.

(b) Notwithstanding any inconsistent provision of law to the contrary, expenditures made in connection with any research demonstration project undertaken pursuant to the provisions of this section shall be subject to state reimbursement under section three hundred sixty-eight-a of this title.

3. The research and demonstration projects undertaken pursuant to the provisions of this section shall limit the individuals participating thereunder to those persons with respect to whom the department has determined that there is a reasonable expectation that the total cost of benefits under such project would be less than the total cost of benefits for such individual if the research and demonstration program were not in effect.

4. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the commissioner may, subject to the approval of the director of the budget, approve any or all of the research and demonstration projects specified in subdivision one of this section, and apply for the appropriate waivers under federal law and regulation, and may waive any of the provisions of this chapter, when such action would be likely to assist in promoting the objectives of this title.

5. (a) For each project undertaken pursuant to the provisions of this section, the department shall submit an interim report and final report to the governor and the legislature. The interim report shall be due eighteen months after the date of approval of the project by the department; the final report shall be due at the conclusion of the project.

(b) Such reports shall include a listing of the accomplishments of the research and demonstration project, and shall evaluate the progress made in achieving the objectives of the project.

6. This section shall be effective with respect to each such project, other than the "New York State Alcoholism Services Demonstration Project", if and as long as, federal participation is available for expenditures made for such research and demonstration project conducted pursuant to the provisions of this section.

* NB Expired July 22, 1986 -- Eldercare: A Social Health Maintenance Organization expired April 9, 2007 per chapter 58 of 2007 Part C § 6.

*** § 364-e. Aid to families with dependent children homemaker/home health aide demonstration projects.** 1. Notwithstanding sections three hundred sixty-six and three hundred sixty-eight-a of this chapter, the department shall have the authority to enter into agreements with social services districts for the purpose of conducting the demonstration project authorized by section nine hundred sixty-six of the omnibus reconciliation act of nineteen hundred eighty, designed to train and employ persons eligible for and receiving aid to families with dependent children benefits as homemakers or home health aides. Such persons shall provide authorized services to elderly or disabled individuals, or other individuals in need of services, to whom such services are not otherwise reasonably and actually available or provided, and who would, without the availability of such services, be reasonably anticipated to require institutional care.

2. Participants in the demonstration project shall be persons who are eligible participants as defined in subdivision (b) of section nine hundred sixty-six of P.L. 96-499.

3. For purposes of this section, authorized services include part-time or intermittent:

- (a) personal care, such as bathing, grooming and toilet care;
- (b) assisting patients having limited mobility;
- (c) feeding and diet assistance;

- (d) home management, housekeeping and shopping;
- (e) health-oriented recordkeeping; and
- (f) simple procedures for identifying potential health problems.

4. For the first year during which a person is employed by a project authorized by this section, such person shall, notwithstanding section three hundred sixty-six of this chapter, retain any eligibility for medical assistance under a state plan approved under Title XIX of the Social Security Act, which such person had at the time he/she entered the project.

5. Expenditures made for services provided by persons participating in this demonstration project shall be considered medical assistance expenditures and shall be reimbursed in accordance with section three hundred sixty-eight-a of this chapter.

6. This section shall be effective if, and as long as, federal financial participation is available therefor.

* NB Expired June 30, 1986

*** § 364-f. Primary care case management programs.** 1. The department is authorized to establish primary care case management programs, under the medical assistance program, in accordance with applicable federal law and regulations. Primary care case management programs shall only be authorized in areas of the state where comprehensive health services plans, as defined in section forty-four hundred one of the public health law, are not yet available. Subject to the approval of the director of the budget, the commissioner is authorized to apply for the appropriate waivers under federal law and regulation, and may waive any of the provisions of sections three hundred sixty-five-a, three hundred sixty-six, three hundred sixty-seven-b, three hundred sixty-eight-a and three hundred sixty-four-j of this chapter or any regulation of the department when such action would be necessary to assist in promoting the objectives of this section.

2. (a) A primary care case management program shall provide

individuals eligible for medical assistance with the opportunity to select a primary care case manager who shall provide medical assistance services to such eligible individuals, either directly, or through referral.

(b) Primary care case managers shall be limited to qualified, licensed primary care practitioners, as defined in paragraph (f) of subdivision one of section three hundred sixty-four-j of this chapter, who meet standards established by the commissioner for the purposes of this program.

(c) Services that may be covered by the primary care case management program are defined by the commissioner in the benefit package. Covered services may include all medical assistance services defined under section three hundred sixty-five-a of this chapter, except:

(i) services excluded under paragraph (e) of subdivision three of section three hundred sixty-four-j of this chapter shall be excluded under this section;

(ii) services provided by residential health care facilities, long term home health care programs, child care agencies, and entities offering comprehensive health services plans;

(iii) services provided by dentists and optometrists; and

(iv) eyeglasses, emergency care, mental health services and family planning services.

(d) Case management services provided by primary care case managers shall include, but need not be limited to:

(i) management of the medical and health care of each recipient to assure that all services provided under paragraph (c) of this subdivision and which are found to be necessary, are made available in a timely manner;

(ii) referral to, and coordination, monitoring and follow-up of, appropriate providers for diagnosis and treatment, the need for which has been identified by the primary care case manager but which is not directly available from the primary care case manager, and assisting medical assistance recipients in the prudent selection of medical services;

(iii) arrangements for referral of recipients to appropriate providers; and

(iv) all early periodic screening, diagnosis and treatment services,

as well as interperiodic screening and referral, to each participant under the age of twenty-one at regular intervals.

3. (a) Primary care case management programs may be conducted only in accordance with guidelines established by the commissioner. For the purpose of implementing and administering the primary care case management programs, the commissioner may contract with private not-for-profit and public agencies as defined in guidelines established by the commissioner for the management and administration of the primary care case management program.

(b) The primary care case management program must:

(i) assure access to and delivery of high quality, appropriate medical services;

(ii) participate in quality assurance activities as required by the commissioner, as well as other mechanisms designed to protect recipient rights under such program;

(iii) ensure that persons eligible for medical assistance will be provided sufficient information regarding the program to make an informed and voluntary choice whether to participate; and

(iv) provide for adequate safeguards to protect recipients from being misled concerning the program and from being coerced into participating in the primary care case management program.

4. (a) Individuals eligible to participate in Medicaid managed care, to participate in Medicaid managed care may participate in a primary care case management program, subject to the availability of such a program within the applicable social services district, except for individuals: (i) required by Medicaid managed care to be enrolled in an entity offering a comprehensive health services plan as defined in paragraph (k) of subdivision two of section three hundred sixty-five-a of this chapter; (ii) participating in another medical assistance reimbursed demonstration or pilot project, or (iii) receiving services as an inpatient from a nursing home or intermediate care facility or residential services from a child care agency or services from a long term home health care program.

(b) Individuals choosing to participate in a primary care case management program will be given thirty days from the effective date of

enrollment in the program to disenroll without cause. After this thirty day disenrollment period, all individuals participating in the program will be enrolled for a period of twelve months, except that all participants will be permitted to disenroll for good cause, as defined in guidelines established by the commissioner.

5. (a) Primary care case management programs may include provisions for innovative payment mechanisms, including, but not limited to, payment of case management fees, capitation arrangements, and fee-for-service payments.

(b) Any new payment mechanisms and levels of payment implemented under the primary care case management program shall be developed by the commissioner subject to the approval of the director of the budget.

6. Notwithstanding any inconsistent provision of this section, participation in a primary care case management program will not diminish the scope of available medical services to which a recipient is entitled.

7. This section shall be effective if, and as long as, federal financial participation is available therefor.

* NB Expires March 31, 2029

*** § 364-g. Medical assistance capitation rate demonstration project.**

1. The department and the county of Monroe are authorized to participate in the "Monroe County MedicaP Plan" research and demonstration project, for the purpose of testing the feasibility of converting from a fee for service payment system to a capitation payment system as a means of financing health care services for medicaid recipients residing in Monroe county.

2. The department shall undertake the research and demonstration project authorized by this section only if it has determined that there is a reasonable expectation that the total cost of benefits under such project would be less than the total cost of benefits if the project was not in effect.

3. Expenditures made in connection with the research and demonstration project authorized by this section shall be subject to state reimbursement in accordance with a schedule of reimbursable amounts approved by the department, the department of health and the director of the budget.

4. The department shall, in a manner to be decided upon by the commissioner, determine what portion of the total expenditures made under the research and demonstration project authorized by this section are attributable to the provision of the services specified in paragraph (g) of subdivision one of section three hundred sixty-eight-a of this title, and shall ensure that the increased state reimbursement available for such services shall be provided.

5. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the commissioner may, subject to the approval of the director of the budget, apply for appropriate waivers of federal law and regulation, and shall be authorized to waive any provisions of sections three hundred sixty-six, three hundred sixty-seven-b and three hundred sixty-eight-a of this title and accompanying regulations of the department, consistent with waivers approved by the federal department of health and human services, when such action would be necessary to assist in promoting the objectives of this section; provided, however, that in the event that the research and demonstration project authorized by this section requires a waiver of article twenty-eight or forty-four of the public health law or accompanying regulations of the department of health, the project shall be conducted jointly with the department of health, and the commissioner of health may waive such provisions of the public health law or department of health regulations with the approval of the commissioner and the director of the budget.

6. Every person eligible for or receiving medical assistance who resides in the county of Monroe shall participate in the demonstration project authorized by this section except for good cause as defined by the commissioner in regulation.

7. Notwithstanding any inconsistent provisions of this section, participation in the project authorized by this section shall not affect a recipient's medical assistance eligibility or the scope of available medical services to which he or she is entitled.

8. The department and the county of Monroe shall jointly submit to the governor and the legislature a long term care capitation implementation plan by March thirty-first, nineteen hundred eighty-five.

9. Providers participating in the research and demonstration project authorized by this section shall submit reports to the commissioner, at such times as he may require, evaluating the results of such project.

10. The department shall submit to the governor and the legislature an interim report and a final report evaluating the project's impact on medicaid costs, access to services, quality of services rendered and any other subjects which the commissioner shall deem relevant. The interim report shall be due January first, nineteen hundred eighty-six and the final report shall be due at the conclusion of the project.

11. This section shall be effective if, and as long as, federal financial participation is available for expenditures made for the project conducted pursuant to the provisions of this section.

* NB Expired March 31, 1988 per sub 11

*** § 364-h. Foster family care demonstration programs for elderly or disabled persons.** 1. The department is authorized to designate up to ten entities which may include general hospitals, residential health care facilities, home health care programs, and long term home health care programs for the purpose of testing whether foster family care programs for certain elderly or disabled persons can be appropriate alternatives to institutional placement in those instances where such individuals do not have a home or the necessary resources or family support to live in the community.

2. A hospital, facility, or program designated as a foster family care

demonstration program shall perform the following functions:

- (a) recruitment, selection and training of families to serve as foster families;
- (b) selection of those elderly or disabled persons who will receive foster family care services under the demonstration project authorized herein, and assessment of their needs;
- (c) provision of or arrangement for necessary medical services; and
- (d) monitoring the care being received by the person in the foster family care home, and assessing the continuing viability of placement in such home.

3. Persons eligible to participate in the foster family care demonstration programs authorized by this section shall be:

- (a) medically eligible for placement in a skilled nursing facility or a health related facility or eligible for home care services;
- (b) capable of being cared for in the community if a suitable home environment and medical support services are provided; and
- (c) lacking the home, resources or family support to live in the community.

4. Families who participate in the foster family care demonstration program shall be willing and able to provide:

- (a) room and board;
- (b) supervision of or assistance with the activities of daily living; and
- (c) personal care and other related services which may be necessary to maintain the person in the community.

5. In designating a hospital, facility, or program to provide a foster family care program, the department shall be satisfied as to the cost-effectiveness of the proposal as compared to institutional long term care.

6. The commissioner may waive the provisions of titles one and two of article seven of this chapter and regulations of the department relative thereto as necessary to implement the provisions of this section; provided, however, the commissioner shall be satisfied that the health,

safety and welfare of persons participating in the foster care programs are not affected negatively by such waivers.

7. This section shall not be interpreted to restrict a medical assistance recipient's choice of provider of services to which he is entitled pursuant to this title or to authorize any change in the eligibility criteria for medical assistance.

8. A medical assistance recipient may discontinue participation in a foster family care demonstration program at any time.

9. The department shall utilize all potential sources of funding for such foster family care programs including, but not limited to, funding available through titles sixteen, eighteen, nineteen and twenty of the federal social security act and the federal older Americans act of 1965, as amended. Services provided as part of a foster family care program and related administrative expenses not otherwise eligible for coverage under these or other funding sources shall be eligible for reimbursement under the medical assistance program for the purposes of this demonstration as long as federal financial participation is available. The department shall take all steps necessary to secure such funding including the submission of applicable waivers. Copies of waiver submissions shall be provided to the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

10. The department, in consultation with the department of health and the office for the aging, shall provide an interim report to the governor and the legislature on or before November first, nineteen hundred eighty-six and a final report on or before October thirty-one, nineteen hundred ninety-five on the results of the foster family care demonstration program. The report shall include findings as to the program's cost effectiveness including consideration of the costs of maintaining the person in the community, funding sources, programmatic benefits and the effect on the need for residential health care facility beds. In the final report, the department shall offer recommendations as to whether the program should be extended, modified, eliminated or made permanent.

11. Foster family care demonstration programs authorized pursuant to chapter nine hundred forty-two of the laws of nineteen hundred eighty-three and chapter five hundred forty-one of the laws of nineteen hundred eighty-four shall comply with the provisions of this section but shall be in addition to the entities designated in subdivision one of this section. Such previously authorized demonstration projects shall be subject to the expiration date of this section.

* NB Repealed December 31, 2027

§ 364-i. Medical assistance presumptive eligibility program. 1. An individual, upon application for medical assistance, shall be presumed eligible for such assistance for a period of sixty days from the date of transfer from a general hospital, as defined in section twenty-eight hundred one of the public health law to a certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the public health law, or to a hospice as defined in section four thousand two of the public health law, or to a residential health care facility as defined in section twenty-eight hundred one of the public health law, if the local department of social services determines that the applicant meets each of the following criteria: (a) the applicant is receiving acute care in such hospital; (b) a physician certifies that such applicant no longer requires acute hospital care, but still requires medical care which can be provided by a certified home health agency, long term home health care program, hospice or residential health care facility; (c) the applicant or his representative states that the applicant does not have insurance coverage for the required medical care and that such care cannot be afforded; (d) it reasonably appears that the applicant is otherwise eligible to receive medical assistance; (e) it reasonably appears that the amount expended by the state and the local social services district for medical assistance in a certified home health agency, long term home health care program, hospice or residential health care facility, during the period of presumed eligibility, would be less than the amount the state and the local social services district would expend for continued acute hospital care for such person; and (f) such other determinative

criteria as the commissioner shall provide by rule or regulation. If a person has been determined to be presumptively eligible for medical assistance, pursuant to this subdivision, and is subsequently determined to be ineligible for such assistance, the commissioner, on behalf of the state and the local social services district shall have the authority to recoup from the individual the sums expended for such assistance during the period of presumed eligibility.

2. Payment for up to sixty days of care for services provided under the medical assistance program shall be made for an applicant presumed eligible for medical assistance pursuant to subdivision one of this section provided, however, that such payment shall not exceed sixty-five percent of the rate payable under this title for services provided by a certified home health agency, long term home health care program, hospice or residential health care facility. Notwithstanding any other provision of law, no federal financial participation shall be claimed for services provided to a person while presumed eligible for medical assistance under this program until such person has been determined to be eligible for medical assistance by the local social services district. During the period of presumed medical assistance eligibility, payment for services provided persons presumed eligible under this program shall be made from state funds. Upon the final determination of eligibility by the local social services district, payment shall be made for the balance of the cost of such care and services provided to such applicant for such period of eligibility and a retroactive adjustment shall be made by the department to appropriately reflect federal financial participation and the local share of costs for the services provided during the period of presumptive eligibility. Such federal and local financial participation shall be the same as that which would have occurred if a final determination of eligibility for medical assistance had been made prior to the provision of the services provided during the period of presumptive eligibility. In instances where an individual who is presumed eligible for medical assistance is subsequently determined to be ineligible, the cost for services provided to such individual shall be reimbursed in accordance with the provisions of section three hundred sixty-eight-a of this article. Provided, however, if upon audit the department determines that there are subsequent determinations of

ineligibility for medical assistance in at least fifteen percent of the cases in which presumptive eligibility has been granted in a local social services district, payments for services provided to all persons presumed eligible and subsequently determined ineligible for medical assistance shall be divided equally by the state and the district.

3. On or before March thirty-first, nineteen hundred ninety-seven, the department shall submit to the governor and legislature an evaluation of the program, including the program's effects on access, quality and cost of care, and any recommendations for future modifications to improve the program.

4. Persons in need of treatment for breast, cervical, colon or prostate cancer; presumptive eligibility. (a) An individual shall be presumed to be eligible for medical assistance under this title beginning on the date that a qualified entity, as defined in paragraph (c) of this subdivision, determines, on the basis of preliminary information, that the individual meets the requirements of paragraph (d) or (e) of subdivision four of section three hundred sixty-six of this title.

(b) Such presumptive eligibility shall continue through the earlier of the day on which a determination is made with respect to the eligibility of such individual for services, or in the case of such an individual who does not file an application by the last day of the month following the month during which the qualified entity makes the determination of presumptive eligibility, such last day.

(c) For the purposes of this subdivision, "qualified entity" means an entity that provides medical assistance approved under this title, and is determined by the department of health to be capable of making determinations of presumptive eligibility under this subdivision.

(d) Care, services and supplies, as set forth in section three hundred sixty-five-a of this title, that are furnished to an individual during a presumptive eligibility period under this subdivision by an entity that is eligible for payments under this title shall be deemed to be medical assistance for purposes of payment and state reimbursement.

5. (a) A pregnant woman shall be presumed to be eligible for medical

assistance under this title, excluding inpatient services and institutional long term care, beginning on the date that a prenatal care provider, licensed under article twenty-eight of the public health law or other prenatal care provider approved by the department of health determines, on the basis of preliminary information, that the pregnant woman's MAGI household income does not exceed the MAGI-equivalent of two hundred percent of the federal poverty line for the applicable family size.

(a-2) At the time of application for presumptive eligibility pursuant to this subdivision, a pregnant woman who resides in a social services district that has implemented the state's managed care program pursuant to section three hundred sixty-four-j of this title must choose a managed care provider. If a managed care provider is not chosen at the time of application, the pregnant woman will be assigned to a managed care provider in accordance with subparagraphs (ii), (iii), (iv) and (v) of paragraph (f) of subdivision four of section three hundred sixty-four-j of this title.

(b) Such presumptive eligibility shall continue through the earlier of: the day on which eligibility is determined pursuant to this title; or the last day of the month following the month in which the provider makes preliminary determination, in the case of a pregnant woman who does not file an application for medical assistance on or before such day.

(c) The department of health shall provide prenatal care providers licensed under article twenty-eight of the public health law and other approved prenatal care providers with such forms as are necessary for a pregnant woman to apply and information on how to assist such women in completing and filing such forms. A qualified provider which determines that a pregnant woman is presumptively eligible shall notify the social services district in which the pregnant woman resides of the determination within five working days after the date on which such determination is made and shall inform the woman at the time the determination is made that she is required to make application by the last day of the month following the month in which the determination is made.

(d) Notwithstanding any other provision of law, care that is furnished to a pregnant woman pursuant to this subdivision during a presumptive

eligibility period shall be deemed as medical assistance for purposes of payment and state reimbursement.

(e) Facilities licensed under article twenty-eight of the public health law providing prenatal care services shall perform presumptive eligibility determinations and assist women in submitting appropriate documentation to the social services district as required by the commissioner; provided, however, that a facility may apply to the commissioner for exemption from this requirement on the basis of undue hardship.

(f) All prenatal care providers enrolled in the medicaid program must provide prenatal care services to eligible service recipients determined presumptively eligible for medical assistance but not yet enrolled in the medical assistance program, and assist women in submitting appropriate documentation to the social services district as required by the commissioner.

6. Notwithstanding any other section of law, where care, services, or supplies are received prior to the date an individual is determined eligible for assistance under this title, medical assistance reimbursement, regardless of funding source, shall be available for such care, services, or supplies only (a) if the care, services, or supplies are received during the three month period preceding the month of application for medical assistance and the recipient is determined to have been eligible in the month in which the care, service, or supply was received, or (b) if provided during a period of presumptive eligibility pursuant to this section.

7. (a) The following individuals shall be presumed to be eligible for medical assistance under this title beginning on the date that a qualified hospital, as defined in paragraph (b) of this subdivision, determines, on the basis of preliminary information, that:

(1) a child has MAGI household income that does not exceed the applicable level for eligibility as provided for pursuant to subparagraph two or three of paragraph (b) of subdivision one of section three hundred sixty-six of this title;

(2) a pregnant woman has MAGI household income that does not exceed the MAGI-equivalent of two hundred percent of the federal poverty line

for the applicable family size;

(3) a parent or caretaker relative has MAGI household income that does not exceed the MAGI-equivalent of one hundred thirty percent of the highest amount that ordinarily would have been paid to a person without any income or resources under the family assistance program as it existed on the first day of November, nineteen hundred ninety-seven, or has net available income, including available support from responsible relatives, that does not exceed the amounts set forth in paragraph (a) of subdivision two of section three hundred sixty-six of this title;

(4) an individual in need of treatment of breast, cervical, colon, or prostate cancer meets the requirements of paragraph (d) or (e) of subdivision four of section three hundred sixty-six of this title;

(5) an individual age nineteen or older and under age sixty-five meets the requirements of subparagraph one of paragraph (b) of subdivision one of section three hundred sixty-six of this title;

(6) an individual under twenty-six years of age meets the requirements of subparagraph nine of paragraph (c) of subdivision one of section three hundred sixty-six of this title; and

(7) an individual has income that does not exceed the MAGI-equivalent of two hundred percent of the federal poverty line for the applicable family size, and the individual meets the requirements of subparagraph six of paragraph (b) of subdivision one of section three hundred sixty-six of this title; coverage pursuant to this subparagraph shall be limited to family planning services reimbursed by the federal government at a rate of ninety percent.

(b) For the purposes of this subdivision, "qualified hospital" means a hospital that:

(1) is licensed as a general hospital under article twenty-eight of the public health law;

(2) is enrolled as a provider in the program of medical assistance under this title;

(3) has notified the department of health of its election to make presumptive eligibility determinations under this subdivision, and agrees to make such determinations in accordance with policies and procedures established by the department;

(4) has been designated by the department of health as a certified application counselor to provide information to individuals concerning

qualified health plans offered through a health insurance exchange and other insurance affordability programs, assist individuals to apply for coverage through a qualified health plan or insurance affordability program, and help facilitate the enrollment of eligible individuals in such plans or programs; and

(5) has not been disqualified by the department of health pursuant to paragraph (c) of this subdivision.

(c) The department of health may disqualify a hospital as a qualified hospital if the department determines that the hospital is not:

(1) making, or is not capable of making, presumptive eligibility determinations in accordance with the policies and procedures established by the department; or

(2) meeting such standards as may be established by the department with respect to the proportion of individuals determined presumptively eligible by the hospital who are found by the medical assistance program to be eligible for ongoing medical assistance after the end of the presumptive eligibility period.

(d) Care, services and supplies, as set forth in section three hundred sixty-five-a of this title, that are furnished to an individual during a presumptive eligibility period under this subdivision by an entity that is eligible for payments under this title shall be deemed to be medical assistance for purposes of payment and state reimbursement.

*** § 364-j. Managed care programs.** 1. Definitions. As used in this section, unless the context clearly requires otherwise, the following terms shall mean:

(a) "Participant". A medical assistance recipient who receives, is required to receive or elects to receive his or her medical assistance services from a managed care provider.

(b) "Managed care provider". An entity that provides or arranges for the provision of medical assistance services and supplies to participants directly or indirectly (including by referral), including case management; and:

(i) is authorized to operate under article forty-four of the public health law or article forty-three of the insurance law and provides or arranges, directly or indirectly (including by referral) for covered

comprehensive health services on a full capitation basis, including a special needs managed care plan or comprehensive HIV special needs plan; or

** (ii) is authorized as a partially capitated program pursuant to section three hundred sixty-four-f of this title or section forty-four hundred three-e of the public health law or section 1915b of the social security act; or

** NB Effective until December 31, 2027

** (ii) is authorized as a partially capitated program pursuant to section three hundred sixty-four-f of this title or section forty-four hundred three-e of the public health law or section 1915b of the social security act.

** NB Effective December 31, 2027

** (iii) is authorized to operate under section forty-four hundred three-g of the public health law.

** NB Repealed December 31, 2027

(c) "Managed care program". A statewide program in which medical assistance recipients enroll on a voluntary or mandatory basis to receive medical assistance services, including case management, directly and indirectly (including by referral) from a managed care provider, including as applicable, a special needs managed care plan or a comprehensive HIV special needs plan, under this section.

(d) "Medical services provider". A physician, nurse, nurse practitioner, physician assistant, licensed midwife, dentist, optometrist or other licensed health care practitioner authorized to provide medical assistance services.

(e) "Center of excellence." A health care facility certified to operate under article twenty-eight of the public health law that offers specialized treatment expertise in HIV care services as defined by the commissioner of health.

(f) "Primary care practitioner". A physician or nurse practitioner providing primary care to and management of the medical and health care services of a participant served by a managed care provider.

(g) "AIDS". AIDS shall have the same meaning as in article twenty-seven-f of the public health law.

(h) "HIV infection". HIV infection shall have the same meaning as in article twenty-seven-f of the public health law.

(i) "HIV-related illness". HIV-related illness shall have the same meaning as in article twenty-seven-f of the public health law.

(j) "Specialty care center". A "specialty care center" shall mean only such centers as are accredited or designated by an agency of the state or federal government or by a voluntary national health organization as having special expertise in treating the disease or condition for which it is accredited or designated.

(k) "Special care". Care, services and supplies relating to the treatment of mental illness, developmental disabilities, alcoholism, alcohol abuse or substance abuse, or HIV infection/AIDS.

(l) "Responsible special care agency". Whichever of the following state agencies has responsibility for the special care in question: the department of health, the office of mental health, the office for people with developmental disabilities, or the office of alcoholism and substance abuse services.

(m) "Special needs managed care plan" shall have the same meaning as in section forty-four hundred one of the public health law.

(n) "Comprehensive HIV special needs plan" shall have the same meaning as in section forty-four hundred three-c of the public health law.

(o) "Third-party payor". Any entity or program that is or may be liable to pay the costs of health and medical care of a recipient of medical assistance benefits, including insurers licensed pursuant to article thirty-two or forty-three of the insurance law, or organizations certified pursuant to article forty-four of the public health law.

(p) "Grievance". Any complaint presented by a participant or a participant's representative for resolution through the grievance process of a managed care provider.

(q) "Emergency medical condition". A medical or behavioral condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in: (i) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition placing the health of the person or others in serious jeopardy; or (ii) serious impairment to such person's bodily functions; or (iii) serious dysfunction of any bodily organ or part of such person; or (iv) serious

disfigurement of such person.

(r) "Emergency care". Health care procedures, treatments or services, including psychiatric stabilization and medical detoxification from drugs or alcohol, that are provided for an emergency medical condition.

(s) "Existing rates". The rates paid pursuant to the most recent executed contract between a local social services district or the state and a managed care provider.

(t) "Managed care rating regions". The regions established by the department of health for the purpose of setting regional premium rates for managed care providers.

(u) "Premium group". The various demographic, gender and recipient categories utilized for rate-setting purposes by the department of health.

(v) "Upper payment limit". The maximum reimbursement that the department of health may pay a managed care provider for providing or arranging for medical services to participants in a managed care program in accordance with the federal social security act and regulations promulgated thereunder.

(x) "Persons with serious mental illness". Individuals who meet criteria established by the commissioner of mental health, which shall include persons who have a designated diagnosis of mental illness under the most recent edition of the diagnostic and statistical manual of mental disorders, and (i) whose severity and duration of mental illness results in substantial functional disability or (ii) who require mental health services on more than an incidental basis.

(y) "Children and adolescents with serious emotional disturbances". Individuals under eighteen years of age who meet criteria established by the commissioner of mental health, which shall include children and adolescents who have a designated diagnosis of mental illness under the most recent edition of the diagnostic and statistical manual of mental disorders, and (i) whose severity and duration of mental illness results in substantial functional disability or (ii) who require mental health services on more than an incidental basis.

(z) "Credentialed alcoholism and substance abuse counselor (CASAC)". An individual credentialed by the office of alcoholism and substance abuse services in accordance with applicable regulations of the commissioner of alcoholism and substance abuse services.

2. (a) The commissioner of health, in cooperation with the commissioner and the commissioners of the responsible special care agencies shall establish managed care programs, under the medical assistance program, in accordance with applicable federal law and regulations. The commissioner of health, in cooperation with the commissioner, is authorized and directed, subject to the approval of the director of the state division of the budget, to apply for federal waivers when such action would be necessary to assist in promoting the objectives of this section.

(b) The commissioner of health has authority to allow social services districts to seek an exemption from this section for up to two years if the social services district can demonstrate and the commissioner of health and the commissioner of responsible special care agencies concurs that the district has insufficient capacity to participate in the program. An exemption under this paragraph may be renewed for additional two year periods.

(c) The commissioner of health, jointly with the commissioner of mental health and the commissioner of alcoholism and substance abuse services shall be authorized to establish special needs managed care plans, under the medical assistance program, in accordance with applicable federal law and regulations. The commissioner of health, in cooperation with such commissioners, is authorized, subject to the approval of the director of the division of the budget, to apply for federal waivers when such action would be necessary to assist in promoting the objectives of this section. With regard to such special needs managed care plans, in addition to the applicable requirements established in this section, such commissioners shall jointly establish standards and requirements to:

(i) ensure that any special needs managed care plan shall have an adequate network of providers to meet the behavioral health and health needs of enrollees, and shall review the adequacy prior to approval of any special needs managed care plan, and upon contract renewal or expansion. To the extent that the network has been determined to meet standards set forth in subdivision five of section four thousand four hundred three of the public health law, such network shall be deemed adequate;

(ii) ensure that any special needs managed care plan shall make level of care and coverage determinations utilizing evidence-based tools or guidelines designed to address the behavioral health needs of enrollees;

(iii) ensure sufficient access to behavioral health and health services for eligible enrollees by establishing and monitoring penetration rates of special needs managed care plans; and

(iv) establish standards to encourage the use of services, products and care recommended, ordered or prescribed by a provider to sufficiently address the behavioral health and health services needs of enrollees; and monitor the application of such standards to ensure that they sufficiently address the behavioral health and health services needs of enrollees.

(d) Whenever the commissioner of health makes changes to the terms, conditions or time frames contained in the model contract that serves as the basis for contracts with managed care providers in the managed care program under this section, the changes shall be posted on the department's website. The department shall post on its website any changes required to be submitted to the centers for medicare and medicaid services (CMS) for approval prior to submission of the changes. A summary of any changes shall also be published in the state register. A notification of any request for proposals issued by the department for managed care providers to participate in the managed care program shall also be published in the state register.

3. (a) Every person eligible for or receiving medical assistance under this article, who resides in a social services district providing medical assistance, which has implemented the state's managed care program shall participate in the program authorized by this section. Provided, however, that participation in a comprehensive HIV special needs plan also shall be in accordance with article forty-four of the public health law and participation in a special needs managed care plan shall also be in accordance with article forty-four of the public health law and article thirty-one of the mental hygiene law.

(d) Until such time as program features and reimbursement rates are approved by the commissioner of health, in consultation with the commissioners of the office of mental health, the office for people with developmental disabilities, the office of children and family services,

and the office of alcoholism and substance abuse services, as appropriate, the following services shall not be provided to medical assistance recipients through managed care programs established pursuant to this section, and shall continue to be provided outside of managed care programs and in accordance with applicable reimbursement methodologies; provided, however, that no medical assistance recipient shall be required to obtain services that are certified, funded, authorized or approved by the commissioner of the office for people with developmental disabilities through a managed care program until the program features approved by the commissioner of health, in consultation with the commissioner of the office for people with developmental disabilities, include features for habilitation services as defined in paragraph c of subdivision one of section forty-four hundred three-g of the public health law:

- (i) day treatment services provided to individuals with developmental disabilities;

- (ii) comprehensive medicaid case management services provided to individuals with developmental disabilities;

- (iii) services provided pursuant to article eighty-nine of the education law;

- (iv) mental health services provided by a certified voluntary free-standing day treatment program where such services are provided in conjunction with educational services authorized in an individualized education program in accordance with regulations promulgated pursuant to article eighty-nine of the education law;

- (v) long term services as determined by the commissioner of the office for people with developmental disabilities, provided to individuals with developmental disabilities at facilities licensed pursuant to article sixteen of the mental hygiene law or clinics serving individuals with developmental disabilities at facilities licensed pursuant to article twenty-eight of the public health law;

- (vi) TB directly observed therapy;

- (vii) AIDS adult day health care;

- (viii) HIV COBRA case management; and

- (ix) other services as determined by the commissioner of health.

(d-1) Services provided pursuant to title two-A of article twenty-five of the public health law shall not be provided to medical assistance

recipients through managed care programs established pursuant to this section, and shall continue to be provided outside of managed care programs and in accordance with applicable reimbursement methodologies.

(d-2) Services provided pursuant to a waiver, granted pursuant to subsection (c) of section 1915 of the federal social security act, to persons suffering from traumatic brain injuries, shall not be provided to medical assistance recipients through managed care programs established pursuant to this section. Services provided pursuant to a waiver, granted pursuant to subsection (c) of section 1915 of the federal social security act, to persons qualifying for nursing home diversion and transition services, shall not be provided to medical assistance recipients through managed care programs until at least January first, two thousand twenty-eight.

(d-3) Services provided in school-based health centers shall not be provided to medical assistance recipients through managed care programs established pursuant to this section.

(d-4) Notwithstanding paragraph (a) of this subdivision, the following medical assistance recipients shall not be eligible to participate in the managed care program authorized by this section or other care coordination model established by article forty-four of the public health law: any person who is permanently placed in a residential health care facility for a consecutive period of three months or more. However, nothing in this paragraph should be construed to apply to enrollees in the Medicaid Advantage Plus Program, developed to enroll persons in managed long-term care who are nursing home certifiable and who are dually eligible pursuant to section forty-four hundred three-f of the public health law. In implementing this provision, the department shall continue to support service delivery and outcomes that result in community living for enrollees.

(e) The following categories of individuals may be required to enroll with a managed care program when program features and reimbursement rates are approved by the commissioner of health and, as appropriate, the commissioners of the office of mental health, the office for people with developmental disabilities, the office of children and family services, and the office of alcoholism and substance abuse services:

(i) an individual dually eligible for medical assistance and benefits under the federal Medicare program; provided, however, nothing herein

shall: (a) require an individual enrolled in a managed long term care plan, pursuant to section forty-four hundred three-f of the public health law, to disenroll from such program; or (b) make enrollment in a Medicare managed care plan a condition of the individual's participation in the managed care program pursuant to this section, or affect the individual's entitlement to payment of applicable Medicare managed care or fee for service coinsurance and deductibles by the individual's managed care provider.

(ii) an individual eligible for supplemental security income;

(iii) HIV positive individuals;

(iv) persons with serious mental illness and children and adolescents with serious emotional disturbances, as defined in section forty-four hundred one of the public health law;

(v) a person receiving services provided by a residential alcohol or substance abuse program or facility for the developmentally disabled;

(vi) a person receiving services provided by an intermediate care facility for the developmentally disabled or who has characteristics and needs similar to such persons;

(vii) a person with a developmental or physical disability who receives home and community-based services or care-at-home services through a demonstration waiver under section eleven hundred fifteen of the federal social security act, existing waivers under section nineteen hundred fifteen (c) of the federal social security act, or who has characteristics and needs similar to such persons;

(viii) a person who is eligible for medical assistance pursuant to subparagraph twelve or subparagraph thirteen of paragraph (a) of subdivision one of section three hundred sixty-six of this title;

(ix) a person receiving services provided by a long term home health care program, or a person receiving inpatient services in a state-operated psychiatric facility or a residential treatment facility for children and youth;

(x) certified blind or disabled children living or expected to be living separate and apart from the parent for thirty days or more;

(xi) residents of nursing facilities;

(xii) a foster child in the placement of a voluntary agency or in the direct care of the local social services district;

(xiii) a person or family that is homeless;

(xiv) individuals for whom a managed care provider is not geographically accessible so as to reasonably provide services to the person. A managed care provider is not geographically accessible if the person cannot access the provider's services in a timely fashion due to distance or travel time;

(xv) a person eligible for Medicare participating in a capitated demonstration program for long term care;

(xvi) an infant living with an incarcerated mother in a state or local correctional facility as defined in section two of the correction law;

(xvii) a person who is expected to be eligible for medical assistance for less than six months;

(xviii) a person who is eligible for medical assistance benefits only with respect to tuberculosis-related services;

(xix) individuals receiving hospice services at time of enrollment; provided, however, that this clause shall not be construed to require an individual enrolled in a managed long term care plan or another care coordination model, who subsequently elects hospice, to disenroll from such program;

(xx) a person who has primary medical or health care coverage available from or under a third-party payor which may be maintained by payment, or part payment, of the premium or cost sharing amounts, when payment of such premium or cost sharing amounts would be cost-effective, as determined by the local social services district;

(xxi) a person receiving family planning services pursuant to subparagraph six of paragraph (b) of subdivision one of section three hundred sixty-six of this title;

(xxii) a person who is eligible for medical assistance pursuant to paragraph (d) of subdivision four of section three hundred sixty-six of this title;

(xxiii) individuals with a chronic medical condition who are being treated by a specialist physician that is not associated with a managed care provider in the individual's social services district; and

(xxiv) Native Americans.

4. The managed care program shall provide participants access to comprehensive and coordinated health care delivered in a cost effective manner consistent with the following provisions:

(a) (i) a managed care provider shall arrange for access to and enrollment of primary care practitioners and other medical services providers. Each managed care provider shall possess the expertise and sufficient resources to assure the delivery of quality medical care to participants in an appropriate and timely manner and may include physicians, nurse practitioners, county health departments, providers of comprehensive health service plans licensed pursuant to article forty-four of the public health law, and hospitals and diagnostic and treatment centers licensed pursuant to article twenty-eight of the public health law or otherwise authorized by law to offer comprehensive health services or facilities licensed pursuant to articles sixteen, thirty-one and thirty-two of the mental hygiene law.

(ii) provided, however, if a major public hospital, as defined in the public health law, is designated by the commissioner of health as a managed care provider in a social services district the commissioner of health shall designate at least one other managed care provider which is not a major public hospital or facility operated by a major public hospital; and

(iii) under a managed care program, not all managed care providers must be required to provide the same set of medical assistance services. The managed care program shall establish procedures through which participants will be assured access to all medical assistance services to which they are otherwise entitled, other than through the managed care provider, where:

(A) the service is not reasonably available directly or indirectly from the managed care provider,

(B) it is necessary because of emergency or geographic unavailability, or

(C) the services provided are family planning services; or

(D) the services are dental services and are provided by a diagnostic and treatment center licensed under article twenty-eight of the public health law which is affiliated with an academic dental center and which has been granted an operating certificate pursuant to article twenty-eight of the public health law to provide such dental services. Any diagnostic and treatment center providing dental services pursuant to this clause shall prior to June first of each year report to the governor, temporary president of the senate and speaker of the assembly

on the following: the total number of visits made by medical assistance recipients during the immediately preceding calendar year; the number of visits made by medical assistance recipients during the immediately preceding calendar year by recipients who were enrolled in managed care programs; the number of visits made by medical assistance recipients during the immediately preceding calendar year by recipients who were enrolled in managed care programs that provide dental benefits as a covered service; and the number of visits made by the uninsured during the immediately preceding calendar year; or

(E) the services are optometric services, as defined in article one hundred forty-three of the education law, and are provided by a diagnostic and treatment center licensed under article twenty-eight of the public health law which is affiliated with the college of optometry of the state university of New York and which has been granted an operating certificate pursuant to article twenty-eight of the public health law to provide such optometric services. Any diagnostic and treatment center providing optometric services pursuant to this clause shall prior to June first of each year report to the governor, temporary president of the senate and speaker of the assembly on the following: the total number of visits made by medical assistance recipients during the immediately preceding calendar year; the number of visits made by medical assistance recipients during the immediately preceding calendar year by recipients who were enrolled in managed care programs; the number of visits made by medical assistance recipients during the immediately preceding calendar year by recipients who were enrolled in managed care programs that provide optometric benefits as a covered service; and the number of visits made by the uninsured during the immediately preceding calendar year; or

(E-1) the services are vision care services rendered to a student at a school based health center approved by the commissioner pursuant to this clause. The commissioner may approve up to five pilot programs at school based health centers in partnership with a charitable foundation that agrees to provide free of charge eyeglass frames and lenses at the centers pursuant to a memorandum of agreement approved by the commissioner. The commissioner may approve the rate for such vision care services at the rate for such services when provided by a federally qualified health center or when provided by another entity licensed

pursuant to article twenty-eight of the public health law and eligible for the ambulatory patient group rate approved for vision care services by the commissioner; or

(F) other services as defined by the commissioner of health.

(b) Participants shall select a managed care provider from among those designated under the managed care program, provided, however, a participant shall be provided with a choice of no less than two managed care providers. Notwithstanding the foregoing, a local social services district designated a rural area as defined in 42 U.S.C. 1395ww may limit a participant to one managed care provider, if the commissioner and the local social services district find that only one managed care provider is available. A managed care provider in a rural area shall offer a participant a choice of at least three primary care practitioners and permit the individual to obtain a service or seek a provider outside of the managed care network where such service or provider is not available from within the managed care provider network.

(c) Participants shall select a primary care practitioner from among those designated by the managed care provider. In all districts, participants shall be provided with a choice of no less than three primary care practitioners. In the event that a participant does not select a primary care practitioner, the participant's managed care provider shall select a primary care practitioner for the participant, taking into account geographic accessibility.

(d) For all other medical services, except as provided in paragraph (c) of this subdivision, if a sufficient number of medical service providers are available, a choice shall be offered.

(e) (i) In any social services district which has not implemented a mandatory managed care program pursuant to this section, the commissioner of health shall establish marketing and enrollment guidelines, including but not limited to regulations governing face-to-face marketing and enrollment encounters between managed care providers and recipients of medical assistance and locations for such encounters. Such regulations shall prohibit, at a minimum, telephone cold-calling and door-to-door solicitation at the homes of medical assistance recipients. The regulations shall also require the commissioner of health to approve any local district marketing guidelines. Managed care providers shall be permitted to assist

participants in completion of enrollment forms at approved health care provider sites and other approved locations. In no case may an emergency room be deemed an approved location. Upon enrollment, participants will sign an attestation that: they have been informed that managed care is a voluntary program; participants have a choice of managed care providers; participants have a choice of primary care practitioners; and participants must exclusively use their primary care practitioner and plan providers except as otherwise provided in this section including but not limited to the exceptions listed in subparagraph (iii) of paragraph (a) of this subdivision. Managed care providers must submit enrollment forms to the local department of social services. The local department of social services will provide or arrange for an audit of managed care provider enrollment forms; including telephone contacts to determine if participants were provided with the information required by this subparagraph. The commissioner of health may suspend or curtail enrollment or impose sanctions for failure to appropriately notify clients as required in this subparagraph.

(ii) In any social services district which has implemented a mandatory managed care program pursuant to this section, the requirements of this subparagraph shall apply to the extent consistent with federal law and regulations. The department of health, may contract with one or more independent organizations to provide enrollment counseling and enrollment services, for participants required to enroll in managed care programs, for each social services district requesting the services of an enrollment broker. To select such organizations, the department of health shall issue a request for proposals (RFP), shall evaluate proposals submitted in response to such RFP and, pursuant to such RFP, shall award a contract to one or more qualified and responsive organizations. Such organizations shall not be owned, operated, or controlled by any governmental agency, managed care provider, or medical services provider.

(iii) Such independent organizations shall develop enrollment guides for participants which shall be approved by the department of health prior to distribution.

(iv) Local social services districts or enrollment organizations through their enrollment counselors shall provide participants with the opportunity for face to face counseling including individual counseling

upon request of the participant. Local social services districts or enrollment organizations through their enrollment counselors shall also provide participants with information in a culturally and linguistically appropriate and understandable manner, in light of the participant's needs, circumstances and language proficiency, sufficient to enable the participant to make an informed selection of a managed care provider. Such information shall include, but shall not be limited to: how to access care within the program; a description of the medical assistance services that can be obtained other than through a managed care provider; the available managed care providers and the scope of services covered by each; a listing of the medical services providers associated with each managed care provider; the participants' rights within the managed care program; and how to exercise such rights. Enrollment counselors shall inquire into each participant's existing relationships with medical services providers and explain whether and how such relationships may be maintained within the managed care program. For enrollments made during face to face counseling, if the participant has a preference for particular medical services providers, enrollment counselors shall verify with the medical services providers that such medical services providers whom the participant prefers participate in the managed care provider's network and are available to serve the participant.

(v) Upon delivery of the pre-enrollment information, the local district or the enrollment organization shall certify the participant's receipt of such information. Upon verification that the participant has received the pre-enrollment education information, a managed care provider, a local district or the enrollment organization may enroll a participant into a managed care provider. Managed care providers must submit enrollment forms to the local department of social services. Upon enrollment, participants will sign an attestation that they have been informed that: participants have a choice of managed care providers; participants have a choice of primary care practitioners; and, except as otherwise provided in this section, including but not limited to the exceptions listed in subparagraph (iii) of paragraph (a) of this subdivision, participants must exclusively use their primary care practitioners and plan providers. The commissioner of health may suspend or curtail enrollment or impose sanctions for failure to appropriately

notify clients as required in this subparagraph.

(vi) Enrollment counselors or local social services districts shall further inquire into each participant's health status in order to identify physical or behavioral conditions that require immediate attention or continuity of care, and provide to participants information regarding health care options available to persons with HIV and other illnesses or conditions under the managed care program. Any information disclosed to counselors shall be kept confidential in accordance with applicable provisions of the public health law, and as appropriate, the mental hygiene law.

(vii) Any marketing materials developed by a managed care provider shall be approved by the department of health or the local social services district, and the commissioner of mental health and the commissioner of alcoholism and substance abuse services, where appropriate, within sixty days prior to distribution to recipients of medical assistance. All marketing materials shall be reviewed within sixty days of submission.

(viii) In any social services district which has implemented a mandatory managed care program pursuant to this section, the commissioner of health shall establish marketing and enrollment guidelines, including but not limited to regulations governing face-to-face marketing and enrollment encounters between managed care providers and recipients of medical assistance and locations for such encounters. Such regulations shall prohibit, at a minimum, telephone cold-calling and door-to-door solicitation at the homes of medical assistance recipients. The regulations shall also require the commissioner of health to approve any local district marketing guidelines.

(f) (i) Participants shall choose a managed care provider at the time of application for medical assistance; if the participant does not choose such a provider the commissioner shall assign such participant to a managed care provider in accordance with subparagraphs (ii), (iii), (iv) and (v) of this paragraph. Participants already in receipt of medical assistance shall have no less than thirty days from the date selected by the district to enroll in the managed care program to select a managed care provider and shall be provided with information to make an informed choice. Where a participant has not selected such a provider

the commissioner of health shall assign such participant to a managed care provider which, if appropriate, may be a special needs managed care plan, taking into account capacity and geographic accessibility. The commissioner may after the period of time established in subparagraph (ii) of this paragraph assign participants to a managed care provider taking into account quality performance criteria and cost. Provided however, cost criteria shall not be of greater value than quality criteria in assigning participants.

(ii) The commissioner may assign participants pursuant to such criteria on a weighted basis, provided however that for twelve months following implementation of a mandatory program, pursuant to a federal waiver, twenty-five percent of the participants that do not choose a managed care provider shall be assigned to managed care providers that satisfy the criteria set forth in subparagraph (i) of this paragraph, and are controlled by, sponsored by, or otherwise affiliated through a common governance or through a parent corporation with, one or more private not-for-profit or public general hospitals or diagnostic and treatment centers licensed pursuant to article twenty-eight of the public health law.

(iii) For twelve months following the twelve months described in subparagraph (ii) of this paragraph twenty-two and one-half percent of the participants that do not choose a managed care provider shall be assigned to managed care providers, that satisfy the criteria set forth in subparagraph (i) of this paragraph and are controlled by, sponsored by, or otherwise affiliated through a common governance or through a parent corporation with, one or more private not-for-profit or public general hospitals or diagnostic and treatment centers licensed pursuant to article twenty-eight of the public health law.

(iv) For twelve months following the twelve months described in subparagraph (iii) of this paragraph twenty percent of the participants that do not choose a managed care provider shall be assigned equally among each of the managed care providers, that satisfy the criteria set forth in subparagraph (i) of this paragraph and are controlled by, sponsored by, or otherwise affiliated through a common governance or through a parent corporation with one or more private not-for-profit or public general hospitals or diagnostic and treatment centers licensed pursuant to article twenty-eight of the public health law.

(v) The commissioner shall assign all participants not otherwise assigned to a managed care plan pursuant to subparagraphs (ii), (iii) and (iv) of this paragraph equally among each of the managed care providers that meet the criteria established in subparagraph (i) of this paragraph; provided, however, that the commissioner shall assign individuals meeting the criteria for enrollment in a special needs managed care plan to such plan or plans where available.

(g) If another managed care provider is available, participants may change such provider or plan without cause within thirty days of notification of enrollment or the effective date of enrollment, whichever is later with a managed care provider by making a request of the local social services district except that such period shall be forty-five days for participants who have been assigned to a provider by the commissioner of health. However, after such thirty or forty-five day period, whichever is applicable, a participant may be prohibited from changing managed care providers more frequently than once every twelve months, as permitted by federal law except for good cause as determined by the commissioner of health through regulations.

(h) If another medical services provider is available, a participant may change his or her provider of medical services (including primary care practitioners) without cause within thirty days of the participant's first appointment with a medical services provider by making a request of the managed care provider. However, after that thirty day period, no participant shall be permitted to change his or her provider of medical services other than once every six months except for good cause as determined by the commissioner through regulations.

(i) A managed care provider requesting a disenrollment shall not disenroll a participant without the prior approval of the local social services district in which the participant resides, provided that disenrollment from a special needs managed care plan must comply with the standards of the commissioner of health, the commissioner of alcoholism and substance abuse services, and the commissioner of mental health. A managed care provider shall not request disenrollment of a participant based on any diagnosis, condition, or perceived diagnosis or condition, or a participant's efforts to exercise his or her rights under a grievance process, provided however, that a managed care provider may, where medically appropriate, request permission to refer

participants to a managed care provider that is a special needs managed care plan or a comprehensive HIV special needs plan after consulting with such participant and upon obtaining his/her consent to such referral, and provided further that a special needs managed care plan may, where clinically appropriate, disenroll individuals who no longer require the level of services provided by a special needs managed care plan.

(j) A managed care provider shall be responsible for providing or arranging for medical assistance services and assisting participants in the prudent selection of such services, including but not limited to:

(1) management of the medical and health care needs of participants by the participant's designated primary care practitioners or group of primary care practitioners to assure that all services provided under the managed care program and which are found to be necessary are made available in a timely manner, in accordance with prevailing standards of professional medical practice and conduct; and

(2) use of appropriate patient assessment criteria to ensure that all participants are provided with appropriate services, including special care;

(3) implementation of procedures, consistent with the requirements of paragraph (c) of subdivision six of section forty-four hundred three of the public health law for managing the care of participants requiring special care which may include the use of special case managers or the designation of a specialist as a primary care practitioner by a participant requiring special care on more than an incidental basis;

(4) implementation of procedures, consistent with the requirements of paragraph (b) of subdivision six of section forty-four hundred three of the public health law to permit the use of standing referrals to specialists and subspecialists for participants who require the care of such practitioners on a regular basis; and

(5) referral, coordination, monitoring and follow-up with regard to other medical services providers as appropriate for diagnosis and treatment, or direct provision of some or all medical assistance services.

(k) A managed care provider shall establish appropriate utilization and referral requirements for physicians, hospitals, and other medical services providers including emergency room visits and inpatient

admissions.

(l) A managed care provider shall be responsible for developing appropriate methods of managing the health care and medical needs of homeless and other vulnerable participants to assure that all necessary services provided under the managed care program are made available and that all appropriate referrals and follow-up treatment are provided, in a timely manner, in accordance with prevailing standards of professional medical practice and conduct.

(m) A managed care provider shall provide all early periodic screening diagnosis and treatment services, as well as interperiodic screening and referral, to each participant under the age of twenty-one, at regular intervals, as medically appropriate.

(n) A managed care provider shall provide or arrange, directly or indirectly (including by referral) for the provision of comprehensive prenatal care services to all pregnant participants in accordance with standards adopted by the department of health.

(o) A managed care provider shall provide or arrange, directly or indirectly, (including by referral) for the full range of covered services to all participants, notwithstanding that such participants may be eligible to be enrolled in a comprehensive HIV special needs plan or special needs managed care plan.

(p) A managed care provider shall implement procedures to communicate appropriately with participants who have difficulty communicating in English and to communicate appropriately with visually-impaired and hearing-impaired participants.

(q) A managed care provider shall comply with applicable state and federal law provisions prohibiting discrimination on the basis of disability.

(r) A managed care provider shall provide services to participants pursuant to an order of a court of competent jurisdiction, provided however, that such services shall be within such provider's or plan's benefit package and are reimbursable under title xix of the federal social security act, provided that services for a substance use disorder shall be provided by a program licensed, certified or otherwise authorized by the office of alcoholism and substance abuse services.

(s) Managed care providers shall be provided with the date of recertification for medical assistance of each of their enrolled

participants in conjunction with the monthly enrollment information conveyed to managed care providers.

(t) Prospective enrollees shall be advised, in written materials related to enrollment, to verify with the medical services providers they prefer, or have an existing relationship with, that such medical services providers participate in the selected managed care provider's network and are available to serve the participant.

(u) A managed care provider that provides coverage for prescription drugs shall permit each participant to fill any mail order covered prescription, at his or her option, at any mail order pharmacy or non-mail-order retail pharmacy in the managed care provider network. If the managed care provider has designated one or more pharmacies for filling prescriptions for a particular drug or drugs, then such prescriptions may be filled, at the participant's option, at any other pharmacy in the network, if the network pharmacy chosen by the participant offers to accept a price that is comparable to that of the pharmacy designated by the managed care provider. For the purposes of this section, "mail order pharmacy" means a pharmacy whose primary business is to receive prescriptions by mail, telefax or through electronic submissions, and to dispense medication to patients through the use of the United States mail or other common or contract carrier services, and provides any consultation with patients electronically rather than face to face. Every non-mail-order retail pharmacy in the managed care provider's network with respect to any prescription drug shall be deemed to be in the managed care provider's network for every covered prescription drug.

(v) A managed care provider must allow enrollees to access chemical dependence treatment services from facilities certified by the office of alcoholism and substance abuse services, even if such services are rendered by a practitioner who would not otherwise be separately reimbursed, including but not limited to a credentialed alcoholism and substance abuse counselor (CASAC).

** (w) A managed care provider shall provide or arrange, directly or indirectly, including by referral, for access to and coverage of services provided by any national cancer institute-designated cancer center licensed by the department of health within the managed care provider's service area that is willing to agree to provide

cancer-related inpatient, outpatient and medical services to participants in all managed care providers offering coverage to medical assistance recipients in such cancer center's service area under the prevailing terms and conditions that the managed care provider requires of other similar providers to be included in the managed care provider's network, provided that such terms shall include reimbursement of such center at no less than the fee-for-service medicaid payment rate and methodology applicable to the center's inpatient and outpatient services.

** NB There are 2 par (w)'s

** NB Repealed January 1, 2028

** (w)(i) The department of health or a managed care organization contracted to provide services pursuant to this section shall establish a program for synchronization of medications. Under the synchronization program, a health care practitioner may prescribe a refill of one or more of the patient's medications for a shorter period than would ordinarily be provided, for the purpose of synchronizing refill dates of one or more of the patient's medications subject to the synchronization, when it is agreed among the recipient, the health care practitioner and a pharmacist that synchronization of multiple prescriptions for the treatment of a chronic illness is in the best interest of the patient for the management or treatment of a chronic illness provided that the following apply to such medications:

(A) are covered by Medicaid services or a managed care organization contracted to provide services pursuant to this chapter;

(B) are used for treatment and management of a chronic illness that are subject to refills;

(C) are not a schedule II controlled substance, nor a schedule III controlled substance that contains hydrocodone or other opioid medication as scheduled in section thirty-three hundred six of the public health law, or a controlled substance under the federal Controlled Substances Act;

(D) meet all prior authorization criteria specific to the medications at the time of the synchronization request;

(E) are of a formulation that can be effectively and lawfully aligned over required short fill periods to achieve synchronization; and

(F) do not have quantity limits or dose optimization criteria or state

or federal requirements that would be violated in fulfilling synchronization.

(ii) The department of health or a managed care organization contracted to provide services under this section shall not deny coverage for the dispensing of a medication by a pharmacy for a partial supply when it is for the purpose of synchronizing the patient's medications. When applicable to permit synchronization, the department of health or a managed care organization contracted to provide services under this title shall allow a pharmacy to override any denial codes indicating that a prescription is being refilled too soon for the purposes of medication synchronization.

(iii) The dispensing fee paid to the pharmacy contracted to provide services pursuant to this section for a partial supply associated with medication synchronization shall be paid in accordance with the Medicaid state plan as approved by the Centers for Medicare and Medicaid Services.

(iv) The requirement of this paragraph applies only once for each prescription drug subject to medication synchronization except when either of the following occurs:

(A) the prescriber changes the dosage or frequency of administration of the prescription drug subject to a medication synchronization; or

(B) the prescriber prescribes a different drug.

(v) Nothing in this paragraph shall be deemed to require health care practitioners and pharmacists to synchronize the refilling of multiple prescriptions for a covered individual.

(vi) The provisions of this paragraph are subject to compliance with all applicable federal and state laws and regulations, including the Centers for Medicare and Medicaid Services approved Medicaid state plan. The commissioner shall apply for waivers and submit state Medicaid plan amendments as are necessary to implement the program for synchronization of medications.

** NB There are 2 par (w)'s

5. Managed care programs shall be conducted in accordance with the requirements of this section and, to the extent practicable, encourage the provision of comprehensive medical services, pursuant to this article.

(a) The managed care program shall provide for the selection of qualified managed care providers by the commissioner of health to participate in the program, including comprehensive HIV special needs plans and special needs managed care plans in accordance with the provisions of section three hundred sixty-five-m of this title; provided, however, that the commissioner of health may contract directly with comprehensive HIV special needs plans consistent with standards set forth in this section, and assure that such providers are accessible taking into account the needs of persons with disabilities and the differences between rural, suburban, and urban settings, and in sufficient numbers to meet the health care needs of participants, and shall consider the extent to which major public hospitals are included within such providers' networks.

(b) A proposal submitted by a managed care provider to participate in the managed care program shall:

(i) designate the geographic area to be served by the provider, and estimate the number of eligible participants and actual participants in such designated area;

(ii) include a network of health care providers in sufficient numbers and geographically accessible to service program participants;

(iii) describe the procedures for marketing in the program location, including the designation of other entities which may perform such functions under contract with the organization;

(iv) describe the quality assurance, utilization review and case management mechanisms to be implemented;

(v) demonstrate the applicant's ability to meet the data analysis and reporting requirements of the program;

(vi) demonstrate financial feasibility of the program; and

(vii) include such other information as the commissioner of health may deem appropriate.

(c) The commissioner of health shall make a determination whether to approve, disapprove or recommend modification of the proposal.

(d) Notwithstanding any inconsistent provision of this title and section one hundred sixty-three of the state finance law, the commissioner of health may contract with managed care providers approved under paragraph (b) of this subdivision, without a competitive bid or request for proposal process, to provide coverage for participants

pursuant to this title.

(e) Notwithstanding any inconsistent provision of this title and section one hundred forty-three of the economic development law, no notice in the procurement opportunities newsletter shall be required for contracts awarded by the commissioner of health, to qualified managed care providers pursuant to this section.

(f) The care and services described in subdivision four of this section will be furnished by a managed care provider pursuant to the provisions of this section when such services are furnished in accordance with an agreement with the department of health, and meet applicable federal law and regulations.

(g) The commissioner of health may delegate some or all of the tasks identified in this section to the local districts.

(h) Any delegation pursuant to paragraph (g) of this subdivision shall be reflected in the contract between a managed care provider and the commissioner of health.

6. A managed care provider shall not engage in the following practices:

(a) use deceptive or coercive marketing methods to encourage participants to enroll; or

(b) distribute marketing materials to recipients of medical assistance, unless such materials are approved by the department of health and, as appropriate, the office of mental health.

7. The department, the department of health or other agency of the state as appropriate shall provide technical assistance at the request of a social services district for the purpose of development and implementation of managed care programs pursuant to this section. Such assistance shall include but need not be limited to provision and analysis of data, design of managed care programs and plans, innovative payment mechanisms, and ongoing consultation. In addition, the department and the department of health shall make available materials to social services districts for purposes of educating persons eligible to receive medical assistance on how their care will be provided through managed care as required under paragraph (e) of subdivision five of this section.

8. (a) The commissioner of health shall institute a comprehensive quality assurance system for managed care providers that includes performance and outcome-based quality standards for managed care.

(b) Every managed care provider shall implement internal quality assurance systems adequate to identify, evaluate and remedy problems relating to access, continuity and quality of care, utilization, and cost of services, provided, however, that the commissioner shall waive the implementation of internal quality assurance systems, where appropriate, for managed care providers described in subparagraph (ii) of paragraph (b) of subdivision one of this section. Such internal quality assurance systems shall conform to the internal quality assurance requirements imposed on health maintenance organizations pursuant to the public health law and regulations and shall provide for:

(i) the designation of an organizational unit or units to perform continuous monitoring of health care delivery;

(ii) the utilization of epidemiological data, chart reviews, patterns of care, patient surveys, and spot checks;

(iii) reports to medical services providers assessing timeliness and quality of care;

(iv) the identification, evaluation and remediation of problems relating to access, continuity and quality of care; and

(v) a process for credentialing and recredentialing licensed providers.

(c) The department of health, in consultation with the responsible special care agencies, shall contract with one or more independent quality assurance organizations to monitor and evaluate the quality of care and services furnished by managed care providers. To select such organization or organizations, the department of health shall issue requests for proposals (RFP), shall evaluate proposals submitted in response to such RFP, and pursuant to such RFP, shall award one or more contracts to one or more qualified and responsive organizations. Such quality assurance organizations shall evaluate and review the quality of care delivered by each managed care provider, on at least an annual basis. Such review and evaluation shall include compliance with the performance and outcome-based quality standards promulgated by the commissioner of health.

(d) Every managed care provider shall collect and submit to the department of health, in a standardized format prescribed by the department of health, patient specific medical information, including encounter data, maintained by such provider for the purposes of quality assurance and oversight. Any information or encounter data collected pursuant to this paragraph, however, shall be kept confidential in accordance with section forty-four hundred eight-a of the public health law and section 33.13 of the mental hygiene law and any other applicable state or federal law.

(e) Information collected and submitted to the department of health by the independent quality assurance organization or managed care provider pursuant to this subdivision shall be made available to the public, subject to any other limitations of federal or state law regarding disclosure thereof to third parties.

(f) Every managed care provider shall ensure that the provider maintains a network of health care providers adequate to meet the comprehensive health needs of its participants and to provide an appropriate choice of providers sufficient to provide the services to its participants by determining that:

(i) there are a sufficient number of geographically accessible participating providers;

(ii) there are opportunities to select from at least three primary care providers; and

(iii) there are sufficient providers in each area of specialty practice to meet the needs of the enrolled population.

(g) The commissioner of health shall establish standards to ensure that managed care providers have sufficient capacity to meet the needs of their enrollees, which shall include patient to provider ratios, travel and distance standards and appropriate waiting times for appointments.

9. Managed care providers shall inform participants of such provider's grievance procedure and utilization review procedures under section forty-four hundred eight-a and article forty-nine of the public health law. A managed care provider or local social services district, as appropriate, shall provide notice to participants of their respective rights to a fair hearing and aid continuing in accordance with

applicable state and federal law. Managed care providers shall provide notice of the name, address, phone number and website of the department of health designated independent consumer assistance program and the independent substance use disorder and mental health ombudsman established by section 33.27 of the mental hygiene law within notices of adverse grievances and appeals determinations.

10. The commissioner of health shall be authorized to establish requirements regarding provision and reimbursement of emergency care.

10-a. For managed care providers with negotiated rates of payment for inpatient hospital services under contracts in effect on April first, two thousand eight, that have a payment rate methodology for such inpatient hospital services that utilizes rates calculated by the department of health pursuant to paragraph (a) or (a-2) of subdivision one of section twenty-eight hundred seven-c for patients under the medical assistance program, such rate shall not include adjustments pursuant to subdivision thirty-three of section twenty-eight hundred seven-c of the public health law for contract periods prior to January first, two thousand ten.

12. The commissioner, by regulation, shall provide that a participant may withdraw from participation in a managed care program upon a showing of good cause.

13. (a) Notwithstanding any inconsistent provisions of this section, participation in a managed care program will not diminish a recipient's medical assistance eligibility or the scope of available medical services to which he or she is entitled. Once a program is implemented by or in the district in accordance with this section, medical assistance for persons who require such assistance, who are eligible for or in receipt of such assistance in the district and who are covered by the program shall be limited to payment of the cost of care, services and supplies covered by the managed care program, only when furnished, prescribed, ordered or approved by a managed care provider, mental health special needs plan or comprehensive HIV special needs plan and otherwise under the program, together with the costs of medically

necessary medical and remedial care, services or supplies which are not available to participants under the program, but which would otherwise be available to such persons under this title and the regulations of the department provided, however, that the program may contain provision for payment to be made for non-emergent care furnished in hospital emergency rooms consistent with subdivision ten of this section.

(b) Notwithstanding any inconsistent provision of law, payment for claims for services as specified in paragraph (a) of this subdivision furnished to eligible persons under this title, who are enrolled in a managed care program pursuant to this section and section three hundred sixty-four-f of this title or other comprehensive health services plans, shall not be made when such services are the contractual responsibility of a managed care provider but are provided by another medical services provider contrary to the managed care plan.

14. The commissioner of health is authorized and directed, subject to the approval of the director of the division of budget, to make grants to social services districts to aid in the planning and development of managed care programs. The total amount expended pursuant to this section shall not exceed the amount appropriated for such purposes in any fiscal year.

15. The managed medical care demonstration program advisory council is abolished.

16. Any waiver application to the federal department of health and human services pursuant to this article and any amendments to such application shall be a public document.

17. (a) The provisions of this section regarding participation of persons receiving family assistance and supplemental security income in managed care programs shall be effective if, and as long as, federal financial participation is available for expenditures for services provided pursuant to this section.

(b) The provisions of this section regarding the furnishing of health and behavioral health services through a special needs managed care plan shall be effective if, and as long as, federal financial participation

is available for expenditures for services provided by such plans pursuant to this section.

18. (a) The department of health may, where not inconsistent with the rate setting authority of other state agencies and subject to approval of the director of the division of the budget, develop reimbursement methodologies and fee schedules for determining the amount of payment to be made to managed care providers under the managed care program. Such reimbursement methodologies and fee schedules may include provisions for payment of managed care fees and capitation arrangements.

(b) The department of health in consultation with organizations representing managed care providers shall select an independent actuary to review any such reimbursement rates. Such independent actuary shall review and make recommendations concerning appropriate actuarial assumptions relevant to the establishment of rates including but not limited to the adequacy of the rates in relation to the population to be served adjusted for case mix, the scope of services the plans must provide, the utilization of services and the network of providers necessary to meet state standards. The independent actuary shall issue a report no later than December thirty-first, nineteen hundred ninety-eight and annually thereafter. Such report shall be provided to the governor, the temporary president and the minority leader of the senate and the speaker and the minority leader of the assembly. The department of health shall assess managed care providers under the managed care program on a per enrollee basis to cover the cost of such report.

* (c) In setting such reimbursement methodologies, the department shall consider costs borne by the managed care program to ensure actuarially sound and adequate rates of payment to ensure quality of care.

* NB There are 2 par (c)'s

* (c) The department of health shall require the independent actuary selected pursuant to paragraph (b) of this subdivision to provide a complete actuarial memorandum, along with all actuarial assumptions made and all other data, materials and methodologies used in the development of rates, to managed care providers thirty days prior to submission of such rates to the centers for medicare and medicaid services for

approval. Managed care providers may request additional review of the actuarial soundness of the rate setting process and/or methodology.

* NB There are 2 par (c)'s

(d) The department of health shall annually provide to the temporary president of the senate and the speaker of the assembly the annual Medicaid managed care operating reports submitted to the department from managed care plans that contract with the state to manage services provided under the Medicaid program.

(e) Increased rates, terms or scope of payment for behavioral health services under this title, where payment is made by a managed care provider under this section, as a result of a rate, coverage or other change made pursuant to a law, regulation, rule or official guidance, shall be deemed in effect on the same date that such change would have taken effect if payment were made other than by the managed care provider. Where payment is not made as of the effective date, the managed care provider shall make retroactive payments to the appropriate service providers.

19. (a) The commissioner of health, in consultation with the commissioner, shall promulgate such regulations as are necessary to implement the provisions of this section provided, however, that the provisions of this subdivision shall not limit specific actions taken by the department of health or the department in order to ensure federal financial participation.

20. Upon a determination that a participant appears to be suitable for admission to a comprehensive HIV special needs plan or a special needs managed care plan, a managed care provider shall inform the participant of the availability of such plans, where available and appropriate.

21. (a) An amount equal to seven million dollars together with any matching federal and local government funds shall be made available for rate adjustments for managed care providers whose rates were set under the competitive bidding process. Such adjustment shall be made in accordance with this paragraph.

(i) Such amount shall be allocated by the department of health among the managed care rating regions based on each region's percentage of

statewide Medicaid managed care enrollment as of January first, nineteen hundred ninety-seven excluding from such calculation enrollment in local social services districts that did not participate in the competitive bidding process.

(ii) From among the funds allocated in a managed care rating region, the department of health shall adjust the existing rates paid to managed care providers for each premium group for the period from January first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight in a manner that raises the rates of all managed care providers in the region to the highest uniform percentage of the upper payment limit possible based on the funds available; provided, however, that no managed care provider's rate for any premium group shall be reduced as a result of such adjustment. For the purpose of calculating appropriate rate increases under this subparagraph, the department of health shall assume that, for the entire period between January first, nineteen hundred ninety-seven and March thirty-first, nineteen hundred ninety-eight, enrollment in each premium group shall be equal to enrollment in the premium group as of July first, nineteen hundred ninety-seven.

(b) In addition to the increases made available in paragraph (a) of this subdivision for the period beginning January first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight, an additional ten million dollars, together with any matching federal and local government funds, shall be added to provide a uniform percentage increase, based on July first, nineteen hundred ninety-seven enrollment to the existing rates paid for all premium groups to all managed care providers whose rates were set by the competitive bidding process.

(c) In addition to the increases made available in paragraphs (a) and (b) of this subdivision for the period beginning January first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight, an additional amount equal to three million dollars together with any matching federal and local government funds, shall be made available to be added to the rates of health plans operating in geographic areas where capacity is insufficient to allow attainment of enrollment goals consistent with the federal 1115 waiver known as the Partnership Plan. Such amount shall be distributed subject to a

demonstration to the commissioner's satisfaction that the plan has executed a contract amendment providing for an increase in enrollment proportional to the size of the plan and the remaining unenrolled population in the county. In evaluating the plan's demonstration, the commissioner shall consider the degree to which the plan has increased the number of primary or specialty care practitioners or diagnostic and treatment centers in its network or whether the additional rate increase would permit the plan to generate greater enrollments while continuing to meet the financial requirements of the public health law or the insurance law whichever is applicable and regulations promulgated pursuant thereto.

Any amount identified in this paragraph remaining uncommitted by December thirty-first, nineteen hundred ninety-seven shall be distributed in a manner consistent with paragraph (b) of this subdivision.

(d) A plan shall be eligible for payments pursuant to paragraphs (a), (b) and (c) of this subdivision for such periods as the plan has a contract with one or more social services districts; provided, however that the plan has a contract, or has made a good faith effort to enter into a contract, in that district effective through March thirty-first, nineteen hundred ninety-eight.

(e) For the period from April first, nineteen hundred ninety-eight through March thirty-first, nineteen hundred ninety-nine, the premium rates paid by the department of health to all managed care providers whose rates were set under the competitive bidding process shall be equal to (i) the managed care provider's rate as of March thirty-first, nineteen hundred ninety-eight increased by a uniform trend factor; plus, (ii) four million dollars together with any matching federal and local government funds to be added as a uniform percentage increase to such provider's rate as of March thirty-first, nineteen hundred ninety-eight, based on enrollment in the premium group as of April first, nineteen hundred ninety-eight.

(f) For the period from April first, nineteen hundred ninety-eight through March thirty-first, nineteen hundred ninety-nine, an additional amount equal to four million dollars together with any matching federal and local government funds, shall be made available for managed care

rate adjustments consistent with the criteria set forth in paragraph (c) of this subdivision. Any amount identified in this paragraph remaining uncommitted by December thirty-first, nineteen hundred ninety-eight shall be added as a uniform percentage increase to the rates of all managed care providers eligible for an increase under paragraph (e) of this subdivision.

22. Chemung county demonstration project. (a) The legislature finds that the particular circumstances of Chemung county warrant authorizing this demonstration project, including the rural nature of the county, the absence of a comprehensive medicaid managed care provider serving the area at this time, patient care needs, and aspects of the health care provider base.

(b) within all or part of Chemung county (referred to in this subdivision as "the catchment area"), the department of health and the Chemung county department of social services are authorized to conduct a Medicaid research and demonstration project (referred to in this subdivision as the "demonstration project") for the purpose of testing the use of innovative administrative techniques, new reimbursement methods, and management of care models, so as to promote more efficient use of health resources, a healthier population and containment of Medicaid program costs.

(c) As part of the demonstration project, the Chemung county department of social services is authorized to contract with a managed care provider for the purposes of, without limitation, developing and managing a provider of care network, establishing provider payment rates and fees, paying provider claims, providing care management services to project participants, and managing the utilization of project services.

(d) The demonstration project shall be consistent with the provisions of this section, except:

(i) The department may waive any rules or regulations, as necessary to implement and consistent with this subdivision.

(ii) The demonstration project shall not be subject to:

(A) paragraph (b) of subdivision four of this section;

(B) subparagraphs (i), (ii), (iii) (v) and (viii) of paragraph (e) of subdivision four of this section;

(C) paragraph (f) of subdivision four of this section;

(D) paragraph (g) of subdivision four of this section;

(E) subdivision five of this section; provided that in approving the demonstration project or modifications to it, the department shall consider the criteria in that subdivision;

(F) sections two hundred seventy-two and two hundred seventy-three of the public health law;

(G) section three hundred sixty-five-i of this title.

(iii) Notwithstanding subdivision three of this section, participation in the project shall be mandatory for all or any specified categories of persons eligible for services under this title for whom the Chemung county department of social services has fiscal responsibility pursuant to section three hundred sixty-five of this title and who reside within the demonstration project catchment area, as determined by the commissioner of health; provided, however, that eligible persons who are also beneficiaries under title XVIII of the federal social security act and persons who reside in residential health care facilities shall not be eligible to participate in the project.

(e)(i) Persons who are enrolled in or apply for medical assistance on or before the date the demonstration project takes effect shall receive sixty days written notice prior to participating in the demonstration project, including an explanation of the demonstration project and the participant's rights and responsibilities. Persons who apply for medical assistance thereafter shall receive such notice at the time of applying for medical assistance.

(ii) The demonstration project shall provide adequate services to overcome language barriers for participants.

(iii) Participants in the demonstration project whose participation in a managed care program would not otherwise be mandatory under subdivision three of this section, who, at the time they enter the demonstration project, have an established relationship with and are receiving services from one or more medical services providers that are not included in the demonstration project's provider network (an "out-of-network provider"), shall be permitted to continue to receive services from such providers until their course of treatment is complete, or in the case of a pregnant woman, while pregnant and for sixty days post-partum. Out-of-network providers that provide services pursuant to this subparagraph shall be subject to the utilization review

and care management procedures prescribed by the managed care provider and shall be reimbursed at the rate that would be paid to such providers by the medical assistance program on a fee for service basis pursuant to this title, and shall accept such reimbursement as payment in full.

(f) The provisions of this subdivision shall not apply unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this subdivision.

(g) The commissioner of health is authorized to submit amendments to the state plan for medical assistance and/or submit one or more applications for waivers of the federal social security act as may be necessary to obtain the federal approvals necessary to implement this subdivision.

(h) The demonstration project shall terminate five years after it is approved by the department and all necessary approvals under federal law and regulations under paragraph (f) of this subdivision have been obtained, unless terminated sooner by the Chemung county department of social services.

23. (a) As a means of protecting the health, safety and welfare of recipients, in addition to any other sanctions that may be imposed, the commissioner, in consultation with the commissioners of the office of mental health and the office of alcoholism and substance abuse services, where appropriate, shall appoint temporary management of a managed care provider upon determining that the managed care provider has repeatedly failed to meet the substantive requirements of sections 1903(m) and 1932 of the federal Social Security Act and regulations. A hearing shall not be required prior to the appointment of temporary management.

(b) The commissioner and/or his or her designees, which may be individuals within the department or other individuals or entities with appropriate knowledge and experience, may be appointed as temporary management. The commissioner may appoint the superintendent of financial services and/or his or her designees as temporary management of any managed care provider which is subject to rehabilitation pursuant to article seventy-four of the insurance law.

(c) The responsibilities of temporary management shall include oversight of the managed care provider for the purpose of removing the

causes and conditions which led to the determination requiring temporary management, the imposition of improvements to remedy violations and, where necessary, the orderly reorganization, termination or liquidation of the managed care provider.

(d) Temporary management may hire and fire managed care provider personnel and expend managed care provider funds in carrying out the responsibilities imposed pursuant to this subdivision.

(e) The commissioner, in consultation with the superintendent with respect to any managed care provider subject to rehabilitation pursuant to article seventy-four of the insurance law, may make available to temporary management for the benefit of a managed care provider for the maintenance of required reserves and deposits monies from such funds as are appropriated for such purpose.

(f) The commissioner is authorized to establish in regulation provisions for the payment of fees and expenses from funds appropriated for such purpose for non-governmental individuals and entities appointed as temporary management pursuant to this subdivision.

(g) The commissioner may not terminate temporary management prior to his or her determination that the managed care provider has the capability to ensure that the sanctioned behavior will not recur.

(h) During any period of temporary management individuals enrolled in the managed care provider being managed may disenroll without cause. Upon reaching a determination that requires temporary management of a managed care provider, the commissioner shall notify all recipient enrollees of such provider that they may terminate enrollment without cause during the period of temporary management.

(i) The commissioner may adopt and amend rules and regulations to effectuate the purposes and provisions of this subdivision.

24. Claims submitted to a managed care provider for payment for medical care, services, or supplies furnished by an out-of-network medical services provider must be submitted within fifteen months of the date the medical care, services, or supplies were furnished to an eligible person to be valid and enforceable against the managed care provider. This deadline for claims submission shall not apply where the claims submission is warranted to address findings or recommendations identified in a state or federal audit except where such audit also

indicates that an inappropriate provider payment was solely the fault of the out-of-network health care provider.

25. Effective January first, two thousand thirteen, notwithstanding any provision of law to the contrary, managed care providers shall cover medically necessary prescription drugs in the atypical antipsychotic therapeutic class, including non-formulary drugs, upon demonstration by the prescriber, after consulting with the managed care provider, that such drugs, in the prescriber's reasonable professional judgment, are medically necessary and warranted.

25-a. Effective July first, two thousand thirteen, notwithstanding any provision of law to the contrary, managed care providers shall cover medically necessary prescription drugs in the anti-depressant, anti-retroviral, anti-rejection, seizure, epilepsy, endocrine, hematologic and immunologic therapeutic classes, including non-formulary drugs, upon demonstration by the prescriber, after consulting with the managed care provider, that such drugs, in the prescriber's reasonable professional judgment, are medically necessary and warranted.

26. The commissioner of health shall develop a standard prior authorization request form or forms to be utilized by all managed care providers for purposes of submitting a request for a utilization review determination for coverage of prescription drug benefits under this title. The managed care provider shall make the standard prior authorization request form or forms available to, and shall accept it or them from, prescribing providers in paper and electronic form.

26-a. Managed care providers shall require prior authorization of prescriptions of opioid analgesics in excess of four prescriptions in a thirty-day period, provided, however, that this subdivision shall not apply if the patient is a recipient of hospice care, has a diagnosis of cancer or sickle cell disease, or any other condition or diagnosis for which the commissioner of health determines prior authorization is not required.

26-b. Managed care providers shall not require prior authorization for

any buprenorphine products, methadone or long acting injectable naltrexone for detoxification or maintenance treatment of a substance use disorder prescribed according to generally accepted national professional guidelines for the treatment of a substance use disorder.

26-c. Managed care providers shall not require prior authorization for methadone, when used for opioid use disorder and administered or dispensed in an opioid treatment program.

** 27. The commissioner of the department of health may make any necessary amendments to a contract pursuant to this section with a managed care provider, as defined in paragraph (b) of subdivision one of this section, to allow such managed care provider to participate as a qualified health plan in a state health benefit exchange established pursuant to the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

** NB There are 2 sb 27's

** 27. (a) The centers for medicare and medicaid services has established an initiative to align incentives between medicare and medicaid. The goal of the initiative is to increase access to seamless, quality programs that integrate services for the dually eligible beneficiary as well as to achieve both state and federal health care savings by improving health care delivery and encouraging high-quality efficient care. In furtherance of this goal, the legislature authorizes the commissioner of health to establish a fully integrated dual advantage (FIDA) program.

(b) The FIDA program shall provide targeted populations of medicare/medicaid dually eligible persons with comprehensive health services that include the full range of medicare and medicaid covered services, including but not limited to primary and acute care, prescription drugs, behavioral health services, care coordination services, and long-term supports and services, as well as other services, through managed care providers, as defined in subdivision one of this section, including managed long term care plans, certified pursuant to section forty-four hundred three-f of the public health law.

(c) Under the FIDA program established pursuant to this subdivision, up to three managed long term care plans may be authorized to

exclusively enroll individuals with developmental disabilities, as such term is defined in section 1.03 of the mental hygiene law. The commissioner of health may waive any of the department's regulations as such commissioner, in consultation with the commissioner of the office for people with developmental disabilities, deems necessary to allow such managed long term care plans to provide or arrange for service for individuals with developmental disabilities that are adequate and appropriate to meet the needs of such individuals and that will ensure their health and safety. The commissioner of the office for people with developmental disabilities may waive any of the office for people with developmental disabilities' regulations as such commissioner, in consultation with the commissioner of health, deems necessary to allow such managed long term care plans to provide or arrange for services for individuals with developmental disabilities that are adequate and appropriate to meet the needs of such individuals and that will ensure their health and safety.

(d) The provisions of this subdivision shall not apply unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this subdivision.

(e) The commissioner of health is authorized to submit amendments to the state plan for medical assistance and/or submit one or more applications for waivers of the federal social security act as may be necessary to obtain the federal approvals necessary to implement this subdivision.

(f) Notwithstanding any inconsistent provisions of this section and sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law to the contrary, the commissioner of health and, in the case of FIDAs authorized exclusively to enroll persons with developmental disabilities, the commissioner of health and the commissioner of the office for people with developmental disabilities, may contract with FIDAs approved under this section without a competitive bid or request for proposal process, are authorized to enter into a contract or contracts under this section, provided, however, that:

(i) the department of health shall post on its website, for a period

of no less than thirty days:

(A) a description of the proposed services to be provided pursuant to the contract or contracts;

(B) the criteria for selection of a contractor or contractors;

(C) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(D) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(ii) all reasonable and responsive submissions that are received from prospective contractors in a timely fashion shall be reviewed by the commissioner of health or commissioners, as applicable; and

(iii) the commissioner or, in the case of FIDAs authorized exclusively to enroll persons with developmental disabilities, the commissioner of health and the commissioner of the office for people with developmental disabilities, may select such contractor or contractors that, in their discretion, have demonstrated the ability to effectively, efficiently and economically integrate health and long term care services, and meet the standards for a certificate of authority under the public health law for the provision of services applicable to the type of managed long term care plan that such contractor proposes to operate.

(g) Nothing in this section shall be construed as requiring an individual with a developmental disability to enroll in a FIDA that is authorized to exclusively enroll individuals with developmental disabilities.

(h) Nothing in this section shall make enrollment in a medicare managed care plan a condition of an individual's participation in the FIDA program, or affect the individual's entitlement to payment of applicable medicare managed care or fee-for-service coinsurance deductibles by the individual's FIDA plan.

** NB There are 2 sb 27's

** 28. To the extent that any provision of this section is inconsistent with any provision of section forty-four hundred three-g of the public health law, such provision of this section shall not apply to an entity authorized to operate pursuant to section forty-four hundred three-g of the public health law.

** NB Repealed December 31, 2027

29. In the event that the department receives approval from the Centers for Medicare and Medicaid Services to amend its 1115 waiver or receives approval for a new 1115 waiver prior to or following the effective date of the chapter of the laws of two thousand twenty-four that amended this subdivision, the commissioner is authorized to enter into contracts and to amend the terms of contracts awarded prior to the effective date of the chapter of the laws of two thousand twenty-four that amended this subdivision, for the purpose of assisting the department of health with implementing projects authorized under such waiver approval. Notwithstanding the provisions of sections one hundred twelve and one hundred sixty-three of the state finance law, or sections one hundred forty-two and one hundred forty-three of the economic development law, or any contrary provision of law, contracts may be entered or contract amendments may be made pursuant to this subdivision until March thirty-first, two thousand twenty-seven without a competitive bid or request for proposal process; provided, however, in the case of a contract entered into after the effective date of this subdivision, that:

(a) The department of health shall post on its website, for a period of no less than thirty days:

(i) A description of the proposed services to be provided pursuant to the contract or contracts;

(ii) The criteria for selection of a contractor or contractors;

(iii) The period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) The manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(b) All reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner of health; and

(c) The commissioner of health shall select such contractor or contractors that, in such commissioner's discretion, are best suited to serve the purposes of this section.

30. Notwithstanding the provisions of section one hundred sixty-three

of the state finance law, or sections one hundred forty-two and one hundred forty-three of the economic development law, or any contrary provision of law, in the event that the state receives prior approval and enhanced financial participation from the Centers for Medicaid and Medicare Services, Administration for Children and Families and the Federal Food and Nutrition Services for reimbursement pursuant to an A-87 cost allocation waiver for enhanced funding for integrated eligibility systems, the state is authorized to enter into contracts, and/or to amend the terms of contracts awarded prior to the effective date of this subdivision, without a competitive bid or request for proposal process, consistent with federal requirements, for the purpose of implementing projects authorized under such waiver amendment; provided, however, in the case of a contract entered into after the effective date of this subdivision, that:

(a) The office of temporary and disability assistance and the office of general services, or another state agency, shall post on its website and concurrently provide to the chair of the senate health committee and the chair of the assembly health committee, for a period of no less than thirty days:

(i) A description of the proposed services to be provided pursuant to the contract or contracts;

(ii) The criteria for selection of a contractor or contractors;

(iii) The period of time during which a prospective contractor may submit an offer, which shall be no less than thirty days after such information is first posted on the website; and

(iv) The manner by which a prospective contractor may submit an offer, which may include submission by electronic means;

(b) All responsive and reasonable offers that are received from prospective contractors in timely fashion shall be reviewed by the commissioner of temporary and disability assistance or other state agency; and

(c) The commissioners of the department of health, the office of temporary and disability assistance and the office of children and family services, working in cooperation with the state chief information officer and the office of general services, shall award such contract to the contractor or contractors offer that provides the best value as such term is defined in section one hundred sixty-three of the state finance

law, to the state. At notification the commissioner of health shall provide this information to the chair of the senate standing health committee and the chair of the assembly health committee.

(d) All decisions made and approaches taken pursuant to this subdivision shall be documented in a procurement record as defined in section one hundred sixty-three of the state finance law.

(e) In accordance with all federal advance planning document guidance and within the parameters established by the enhanced financial participation from the centers for Medicaid and Medicare services, administration for children and families and the federal food and nutrition services for reimbursement to an A-87 cost allocation waiver for enhanced funding for integrated eligibility systems, Phase 1 will include foundational allowable shared service components required to successfully meet the requirements for non-MAGI Medicaid such as a common client portal, document management, rules engines, workflow management tools, case management, notices and training.

(f) The contract will require training to be provided at no cost to the social services districts.

(g) The contract shall require the completion of shared service components by the timelines necessary to receive the enhanced financial participation from the centers for Medicaid and Medicare services, administration for children and families and the federal food and nutrition services for reimbursement to an A-87 cost allocation waiver.

(h) The commissioner shall provide, within thirty days of award of such contract or contracts, the chair of the senate standing committee on health and the chair of the assembly health committee with a report outlining the procurement and awards.

31. (a) The commissioner shall require managed care providers under this section, managed long-term care plans under section forty-four hundred three-f the public health law and other appropriate long-term service programs to adopt expedited procedures for approving personal care services for a medical assistance recipient who requires immediate personal care or consumer directed personal assistance services pursuant to paragraph (e) of subdivision two of section three hundred sixty-five-a of this title or section three hundred sixty-five-f of this title, respectively, or other long-term care, and provide such care or

services as appropriate, pending approval by such provider or program.

32. (a) The commissioner, or for the purposes of subparagraph (iv) of paragraph (c) of this subdivision, the Medicaid inspector general in consultation with the commissioner, may, in his or her discretion, apply penalties to managed care organizations subject to this section and article forty-four of the public health law, including managed long term care plans, for untimely or inaccurate submission of encounter data; provided however, no penalty shall be assessed if the managed care organization submits, in good faith, timely and accurate data and a material amount of such data is not successfully received by the department as a result of department system failures or technical issues that are beyond the control of the managed care organization.

(b) The commissioner, or for the purposes of subparagraph (iv) of paragraph (c) of this subdivision, the Medicaid inspector general in consultation with the commissioner, shall consider the following when determining whether to assess a penalty against a managed care organization and the amount of such penalty:

(i) the degree to which the managed care organization submitted inaccurate data at a category of service level and the frequency of such inaccurate data submissions by the managed care organization;

(ii) the degree to which the managed care organization submitted untimely data or no data and the frequency of such untimely data submissions or failures to submit by the managed care organization; and

(iii) the timeliness of the managed care organization in curing or correcting inaccurate or untimely data.

For purposes of this section, "encounter data" shall mean all encounter records or adjustments to previously submitted records which the managed care organization has received and processed from provider encounter or claim records of all contracted services rendered to an enrollee of the managed care organization in the current or any preceding month. Any penalty assessed under this subdivision shall be calculated as a percentage of the Medicaid capitated premium calculated by the department and paid to the managed care organization.

(c) (i) Penalties assessed pursuant to this subdivision against a managed care organization other than a managed long term care plan

certified pursuant to section forty-four hundred three-f of the public health law shall be as follows:

(A) for encounter data submitted or resubmitted past the deadlines set forth in the model contract, the Medicaid capitated premiums shall be reduced by one-third percent; and

(B) for incomplete or inaccurate encounter data, evaluated at a category of service level, that fails to conform to department developed benchmarks for completeness and accuracy, the Medicaid capitated premiums shall be reduced by one and one-third percent; and

(C) for submitted data that results in a rejection rate in excess of ten percent of department developed volume benchmarks, the Medicaid capitated premiums shall be reduced by one-third percent.

(ii) Penalties assessed pursuant to this subdivisions against a managed long term care plan certified pursuant to section forty-four hundred three-f of the public health law shall be as follows:

(A) for encounter data submitted or resubmitted past the deadlines set forth in the model contract, the Medicaid capitated premiums shall be reduced by one-quarter percent;

(B) for incomplete or inaccurate encounter data, evaluated at a category of service level, that fails to conform to department developed benchmarks for completeness and accuracy, the Medicaid capitated premiums shall be reduced by one percent; and

(C) for submitted data that results in a rejection rate in excess of ten percent of department developed volume benchmarks, the Medicaid capitated premiums shall be reduced by one-quarter percent.

(iii) For incomplete or inaccurate encounter data, identified in the course of an audit, investigation or review by the Medicaid inspector general, the Medicaid capitated premiums shall be reduced by an additional one percent.

(d) (i) Penalties under this subdivision may be applied to any and all circumstances described in paragraph (b) of this subdivision until the managed care organization complies with the requirements for submission of encounter data.

(ii) No penalties for late, incomplete or inaccurate encounter data shall be assessed against managed care organizations in addition to those provided for in this subdivision, provided, however, that nothing in this paragraph shall prohibit the imposition of penalties, in cases

of fraud, waste or abuse, otherwise authorized by law.

33. For services under this title provided by residential health care facilities under article twenty-eight of the public health law, the commissioner shall direct managed care organizations licensed under article forty-four of the public health law, article forty-three of the insurance law, and this section, to continue to reimburse at a benchmark rate which is to be the fee-for-service rate calculated pursuant to section twenty-eight hundred eight of the public health law. The benchmark fee-for-service rate shall continue to be paid by such managed care organizations for all services provided by residential healthcare facilities from the effective date of this subdivision at least until December thirty-first, two thousand twenty. The commissioner may require, as a condition of continuing to require payment at such benchmark rate that aggregate managed care expenditures to residential health care facilities meet the alternative payment methodology requirements set forth in attachment I of the New York State section 1115 medicaid redesign team waiver as approved by the centers for medicare and medicaid services. The commissioner of health shall waive such requirements if a sufficient number of providers, as determined by the commissioner, suffer a financial hardship as a consequence of such alternative payment methodology requirements, or if the commissioner determines that such alternative payment methodologies significantly threaten individuals' access to residential health care facility services; such waiver may be applied on a provider-specific or industry-wide basis. Further, such requirements may be waived, as the commissioner determines necessary, to comply with federal rules or regulations governing these payment methodologies.

34. For purposes of recovery of overpayments pursuant to subdivision thirty-five of this section, any payment made pursuant to the state's managed care program, including payments made by managed long term care plans, shall be deemed a payment by the state's medical assistance program, provided that this subdivision shall not permit the imposition of a lien or recovery against property of an individual or estate on account of medical assistance payments where recovery is made against the individual's managed care provider or provider of medical assistance

program items or services. Provided however nothing in this subdivision shall be construed to limit recoveries under other relevant sections of law.

35. Recovery of overpayments from network providers. (a) Where the Medicaid inspector general during the course of an audit, investigation, or review, or the deputy attorney general for the Medicaid fraud control unit during the course of an investigation or prosecution for Medicaid fraud, identifies medical assistance overpayments made by a managed care provider or managed long term care plan to its subcontractor or subcontractors or provider or providers, the state shall have the right to recover the overpayment from the subcontractor or subcontractors, provider or providers, or the managed care provider or managed long term care plan; provided, however, in no event shall the state duplicate the recovery of an overpayment from a provider or subcontractor.

(b) Where the state is unsuccessful in recovering an overpayment from the subcontractor or subcontractors or provider or providers, the Medicaid inspector general may require the managed care provider or managed long term care plan to recover the medical assistance overpayment identified in paragraph (a) of this subdivision on behalf of the state. The managed care provider or managed long term care plan shall remit to the state the full amount of the identified overpayment no later than six months after receiving notice of the overpayment from the state.

36. Medicaid Program Integrity Reviews. (a) For purposes of this subdivision, managed care provider shall also include managed long term care plans.

(b) The Medicaid inspector general shall conduct periodic reviews of the contractual performance of each managed care provider as it relates to the managed care provider's program integrity obligations under its contract with the department. The Medicaid inspector general, in consultation with the commissioner, shall publish on its website, a list of those contractual obligations pursuant to which the managed care provider's program integrity performance shall be evaluated, including benchmarks, prior to commencing any review. A Medicaid program integrity review of a managed care provider conducted pursuant to this

subdivision, may be completed no more than annually. Reviews performed pursuant to this subdivision shall include a review of compliance with contractual standards which prevent fraud, waste, or abuse. Such standards may include but are not limited to excluded providers, restricted recipient program, reporting obligations, compliance programs, and suspension of payments. However, if the Medicaid inspector general determines that a subsequent review, pursuant to this subdivision, is necessary, a second review may occur within one year.

(c) If, as a result of his or her review, the Medicaid inspector general determines that a managed care provider is not meeting its program integrity obligations, the Medicaid inspector general may recover from the managed care provider up to two percent of the Medicaid premiums paid to the managed care provider for the period under review. Any premium recovery under this subdivision shall be a percentage of the administrative component of the Medicaid premium calculated by the department and may be recovered by the department in the same manner it recovers overpayments.

(d) The managed care provider shall be entitled to receive a draft audit report and final audit report containing the results of the Medicaid inspector general's review. If the Medicaid inspector general determines to recover a percentage of the premium as described in paragraph (c) of this subdivision, the managed care provider shall be entitled to notice and an opportunity to be heard in accordance with section twenty-two of this chapter.

37. Managed care providers shall report to the department all sources and amounts of income, payments, and financial benefits related to the provision of pharmacy benefits, including, but not limited to, any pricing discounts, rebates of any kind, inflationary payments, credits, clawbacks, fees, grants, chargebacks, reimbursements, or other benefits whether such income, payments, or financial benefits are received directly by the managed care provider or passed through from a pharmacy benefit manager or other entity. Managed care providers shall also report to the department the amounts of any administrative fees paid to cover the cost of providing pharmacy benefit management services. The reporting required in this subdivision shall be supplemental to and included with other existing reporting requirements, including but not

limited to any quarterly reporting requirements.

** 38. (a) When a patient's health care provider prescribes an opioid dependence agent or opioid antagonist that is not on the statewide formulary of opioid dependence agents and opioid antagonists, the prescriber shall consult with the managed care plan to confirm that in his or her reasonable professional judgment, the patient's clinical condition is consistent with the criteria for approval of the non-preferred or non-formulary drug. Such criteria shall include:

(i) the preferred drug has been tried by the patient and has failed to produce the desired health outcomes;

(ii) the patient has tried the preferred drug and has experienced unacceptable side effects;

(iii) the patient has been stabilized on a non-preferred drug and transition to the preferred or formulary drug would be medically contraindicated; or

(iv) other clinical indications identified by the committee for the patient's use of the non-preferred drug, which shall include consideration of the medical needs of special populations, including children, elderly, chronically ill, persons with mental health conditions, persons affected by HIV/AIDS and pregnant persons with a substance use disorder.

(b) The managed care plan shall have a process for a patient, or the patient's prescribing health care provider, to request a review for a prescription drug that is not on the statewide formulary of opioid dependence agents and opioid antagonists, consistent with 42 C.F.R. 438.210(d), or any successor regulation.

(c) A managed care plan's failure to comply with the requirements of this subdivision shall be subject to a one thousand dollar fine per violation.

** NB There are 2 sb 38's

** 38. Penalties for the submission of misstated cost reports. (a) For purposes of this subdivision, managed care provider shall also include managed long-term care plans.

(b) The Medicaid inspector general may, in his or her discretion and in consultation with the commissioner, impose a penalty on a managed care provider whose filed cost report contained a misstatement of fact including:

- (i) unsubstantiated or improper costs;
- (ii) number of member months;
- (iii) number of events.

For purposes of this paragraph, number of events shall include, but not be limited to understated births or deliveries.

(c) (i) For misstatements found in subparagraph (i) of paragraph (b) of this subdivision, the penalty shall be equal to the amount of the misstatement multiplied by two.

(ii) For misstatements found in subparagraph (ii) of paragraph (b) of this subdivision, the penalty shall be the amount of the premium capitation paid by the department for the region per member month.

(iii) For misstatements found in subparagraph (iii) of paragraph (b) of this subdivision, the penalty shall be the amount of the supplemental capitation paid by the department for the region per member event.

(d) Any penalty imposed under this subdivision may be recovered by the department in any manner authorized by law.

(e) The managed care provider against whom a penalty is imposed pursuant to this subdivision shall be entitled to notice and an opportunity to be heard in accordance with section twenty-two of this chapter.

** NB There are 2 sb 38's

39. Medicaid fraud, waste and abuse prevention. (a) For purposes of this subdivision, managed care provider shall also include managed long-term care plans.

(b) Managed care providers shall adopt and implement policies and procedures designed to detect and prevent fraud, waste and abuse. This shall include the adoption and implementation of a compliance program as required by section three hundred sixty-three-d of this title and the terms of the contract between the managed care provider and the state, and for managed care providers with an enrolled population of one thousand or more persons in the aggregate in any given year, the establishment of a special investigation unit which will have primary responsibility for implementing the managed care provider's policies and procedures to detect and prevent fraud, waste and abuse, as it relates to the managed care provider's participation in the medical assistance

program.

(c) The managed care provider shall coordinate its fraud, waste and abuse prevention activities with the Medicaid inspector general and the department of health. The Medicaid inspector general, in consultation with the department of health, may promulgate regulations establishing standards and requirements for the operation of managed care provider fraud, waste and abuse prevention activities, including requirements for special investigation units. The provisions of this subdivision notwithstanding, the managed care provider shall continue to comply with all the requirements of section forty-four hundred fourteen of the public health law.

40. (a) The commissioner shall be entitled to penalize managed care providers for failure to meet the contractual obligations and performance standards of the executed contract between the state and a managed care provider in place at the time of the failure.

(b) The commissioner shall have sole discretion in determining whether to impose a penalty for noncompliance with any provision of such contract.

(c) (i) Penalties imposed by this subdivision against a managed care provider shall be from two hundred fifty dollars up to twenty-five thousand dollars per violation depending on the severity of the noncompliance as determined by the commissioner.

(ii) The commissioner may elect, in their sole discretion, to assess penalties imposed by this section from, and as a set off against, payments due to the managed care provider, or payments that become due any time after the assessment of penalties. Deductions may continue until the full amount of the noticed penalties are paid in full.

(iii) All penalties imposed by the commissioner pursuant to this subdivision shall be paid out of the administrative costs and profits of the managed care provider. The managed care provider shall not pass the penalties imposed by the commissioner pursuant to this subdivision through to any medical services provider and/or subcontractor.

(d) For the purposes of this subdivision a violation shall mean a determination by the commissioner that the managed care provider failed to act as required under the contract between the state and the managed care provider in place at the time of the failure, or applicable federal

and state statutes, rules or regulations governing managed care providers. Each instance of a managed care provider failing to furnish necessary and/or required medical services or items to each enrollee shall be a separate violation and each day that an ongoing violation continues shall be a separate violation.

(e) No penalties shall be assessed pursuant to this subdivision without providing an opportunity for a formal hearing conducted in accordance with section twelve-a of the public health law.

(f) Nothing in this subdivision shall prohibit the imposition of damages, penalties or other relief, otherwise authorized by law, including but not limited to cases of fraud, waste or abuse.

(g) The commissioner may promulgate any regulations necessary to implement the provisions of this subdivision.

* NB Repealed March 31, 2029 (per ch. 165/1991)

* NB Repealed March 31, 2029 (per ch. 710/1988)

§ 364-j-2. Transitional supplemental payments. 1. As used in this section, "covered provider" shall mean a voluntary not-for-profit health care provider that is any of the following:

(a) a freestanding diagnostic and treatment center licensed under article twenty-eight of the public health law that qualifies for a distribution pursuant to section twenty-eight hundred seven-p of such article, or section seven of chapter four hundred thirty-three of the laws of nineteen hundred ninety-seven, or receives funding under section three hundred thirty-three of the federal public health services act for health care for the homeless; or

(b) a freestanding diagnostic and treatment center which operates an approved program under the prenatal care assistance program established pursuant to article twenty-five of the public health law; or

(c) a facility licensed under article twenty-eight of the public health law that is sponsored by a university or dental school which has been granted an operating certificate pursuant to article twenty-eight of the public health law to provide dental services; or

(d) a freestanding family planning clinic licensed under article twenty-eight of the public health law.

2. (a) Notwithstanding paragraphs (b) and (h) of subdivision two of section twenty-eight hundred seven of the public health law, the commissioner of health shall make supplemental payments of nine million eight hundred twenty-four thousand dollars (\$9,824,000), to covered providers described in subdivision one of this section who are qualified providers as described in paragraph (a) of subdivision three of this section, based on adjustments to fee-for-service rates for the period February first through March thirty-first, two thousand two and nine million eight hundred twenty-four thousand dollars (\$9,824,000) for the period October first through December thirty-first, two thousand two and four million nine hundred twelve thousand dollars (\$4,912,000) for the period October first through December thirty-first, two thousand three and an additional amount of four million nine hundred twelve thousand dollars (\$4,912,000) for the period October first through December thirty-first, two thousand three and nine million eight hundred twenty-four thousand dollars (\$9,824,000) for the period April first through June thirtieth, two thousand five, and nine million eight hundred twenty-four thousand dollars (\$9,824,000) for the period October first through December thirty-first, two thousand six, and an additional nine million eight hundred twenty-four thousand dollars (\$9,824,000) for the period October first through December thirty-first, two thousand six, and nine million eight hundred twenty-four thousand dollars (\$9,824,000) for the period October first through December thirty-first, two thousand seven, as medical assistance payments for services provided pursuant to this title for persons eligible for federal financial participation under title XIX of the federal social security act to reflect additional costs associated with the transition to a managed care environment, and nine million eight hundred twenty-four thousand dollars (\$9,824,000) for the period October first through December thirty-first, two thousand eight, and seven million three hundred eighty-eight thousand dollars (\$7,388,000) for the period October first through December thirty-first, two thousand nine, as medical assistance payments for services provided pursuant to this title for persons eligible for federal financial participation under title XIX of the federal social security act to reflect additional costs associated with the operation of electronic health record systems that meet such standards as may be established by the commissioner of health. There

shall be no local share in these payments. The director of the budget shall allocate the non-federal share of such payments from an appropriation for the miscellaneous special revenue fund - 339 community service provider assistance program account for the two thousand one--two thousand two state fiscal year for adjustments for the period February first through March thirty-first, two thousand two. Adjustments for the period October first, two thousand two through December thirty-first, two thousand two shall be within amounts appropriated for the two thousand two--two thousand three state fiscal year and adjustments for the period October first, two thousand three through December thirty-first, two thousand three shall be within amounts appropriated for the two thousand three--two thousand four state fiscal year and adjustments for the non-federal share of the additional amount of four million nine hundred twelve thousand dollars (\$4,912,000) for such period shall be allocated by the director of the budget from an appropriation for maintenance undistributed general fund community projects fund - 007 account for the two thousand three--two thousand four state fiscal year. The director of the budget shall allocate the non-federal share of adjustments for the period April first, two thousand five through June thirtieth, two thousand five from an appropriation for the maintenance undistributed general fund community projects fund - 007 - cc account for the two thousand four--two thousand five state fiscal year. The director of the budget shall allocate the non-federal share of adjustments for the period October first, two thousand six through December thirty-first, two thousand six from an appropriation for the maintenance undistributed, general fund, community projects fund - 007-cc account for the two thousand five--two thousand six state fiscal year. The director of the budget shall allocate the non-federal share of the additional adjustments for the period October first, two thousand six through December thirty-first, two thousand six from such funds as may be made available from an appropriation for the maintenance undistributed, general fund, community projects fund - 007-cc account for the two thousand six--two thousand seven state fiscal year. The director of the budget shall allocate the non-federal share of the adjustments for the period October first, two thousand seven through December thirty-first, two thousand seven from an appropriation for the medical assistance program, general fund, local assistance account - 001

for the two thousand seven--two thousand eight state fiscal year. The director of the budget shall allocate the non-federal share of the adjustments for the period October first, two thousand eight through December thirty-first, two thousand eight from an appropriation for the medical assistance program, general fund, local assistance account - 001 for the two thousand eight--two thousand nine state fiscal year. The director of the budget shall allocate the non-federal share of the adjustments for the period October first, two thousand nine through December thirty-first, two thousand nine from an appropriation for the medical assistance program, general fund, local assistance account - 001 for the two thousand nine--two thousand ten state fiscal year. Such adjustments to fee for service rates shall not be subject to subsequent adjustment or reconciliation. Alternatively, such payments may be made as aggregate payments to eligible providers.

(a-1) Notwithstanding the provisions of paragraph (a) of this subdivision, for facilities licensed under article twenty-eight of the public health law that are sponsored by a university or dental school which has been granted an operating certificate pursuant to article twenty-eight of the public health law and which provides dental services as its principal mission, two hundred twenty-four thousand dollars (\$224,000) in the aggregate for use pursuant to this section shall be allocated for distribution to such facilities pursuant to the methodology described in paragraph (b) of subdivision two and subparagraph (i) of paragraph (b) of subdivision four of section two thousand eight hundred seven-p of the public health law for services provided for the period February first, two thousand two through March thirty-first, two thousand two to persons eligible for federal financial participation under title XIX of the federal social security act, provided, however, that the amount paid pursuant to this paragraph for each such facility shall equal the facility's proportional share of the total nominal payment amounts calculated under this section of all such facilities multiplied by the total funds allocated for such payments. There shall be no local share in these payments. The director of the budget shall allocate the non-federal share of such payments from an appropriation for the miscellaneous special revenue fund - 339 community service provider assistance program account for the two thousand one--two thousand two state fiscal year. Such adjustments to fee for

service rates shall not be subject to subsequent adjustment or reconciliation. Alternatively, such payments may be made as aggregate payments to eligible providers.

(a-2) (i) Notwithstanding the provisions of paragraph (a) of this subdivision, for facilities licensed under article twenty-eight of the public health law that are sponsored by a university or dental school which has been granted an operating certificate pursuant to article twenty-eight of the public health law and which provides dental services as its principal mission, two hundred twenty-four thousand dollars (\$224,000) in the aggregate of the amount appropriated for the two thousand two--two thousand three state fiscal year for use pursuant to this section shall be allocated for the period October first through December thirty-first, two thousand two and one hundred twelve thousand dollars (\$112,000) in the aggregate of the amount appropriated for the two thousand three--two thousand four state fiscal year, and an additional amount of one hundred twelve thousand dollars (\$112,000) in the aggregate for use pursuant to this section shall be allocated for the period October first through December thirty-first, two thousand three and two hundred twenty-four thousand dollars (\$224,000) in the aggregate of the amount appropriated for the two thousand four--two thousand five state fiscal year shall be allocated for the period April first, two thousand five through June thirtieth, two thousand five, and two hundred twenty-four thousand dollars (\$224,000) in the aggregate of the amount appropriated for the two thousand five--two thousand six state fiscal year shall be allocated for the period October first, two thousand six through December thirty-first, two thousand six, and an additional two hundred twenty-four thousand dollars (\$224,000) in the aggregate of the amount appropriated for the two thousand six--two thousand seven state fiscal year shall be allocated for the period October first, two thousand six through December thirty-first, two thousand six, and two hundred twenty-four thousand dollars (\$224,000) in the aggregate of the amount appropriated for the two thousand seven--two thousand eight state fiscal year shall be allocated for the period October first, two thousand seven through December thirty-first, two thousand seven, and two hundred twenty-four thousand dollars (\$224,000) in the aggregate of the amount appropriated for the two thousand eight--two thousand nine state fiscal year shall be allocated for the

period October first, two thousand eight through December thirty-first, two thousand eight and two hundred twenty-four thousand dollars (\$224,000) in the aggregate of the amount appropriated for the two thousand nine--two thousand ten state fiscal year shall be allocated for the period October first, two thousand nine through December thirty-first, two thousand nine for distribution to such facilities pursuant to subparagraphs (ii) and (iii) of this paragraph. Adjustments for the non-federal share of the additional amount of one hundred twelve thousand dollars (\$112,000) for the period October first, two thousand three through December thirty-first, two thousand three shall be allocated by the director of the budget from an appropriation for maintenance undistributed general fund community projects fund - 007 account for the two thousand three--two thousand four state fiscal year. The non-federal share of adjustments for the period April first, two thousand five through June thirtieth, two thousand five shall be allocated by the director of the budget from an appropriation for the maintenance undistributed general fund community projects fund - 007 account for the two thousand four--two thousand five state fiscal year. The non-federal share of adjustments for the period October first, two thousand six through December thirty-first, two thousand six shall be allocated by the director of the budget from an appropriation for the maintenance undistributed, general fund, community projects fund - 007-cc account for the two thousand five--two thousand six state fiscal year. The non-federal share of the additional adjustments for the period October first, two thousand six through December thirty-first, two thousand six shall, subject to the availability of funds, be allocated by the director of the budget from the medical assistance local assistance appropriation for the two thousand six--two thousand seven state fiscal year. The non-federal share of the adjustments for the period October first, two thousand seven through December thirty-first, two thousand seven shall be allocated by the director of the budget from an appropriation for the medical assistance program, general fund, local assistance account - 001 for the two thousand seven--two thousand eight state fiscal year. The non-federal share of the adjustments for the period October first, two thousand eight through December thirty-first, two thousand eight shall be allocated by the director of the budget from an appropriation for the medical assistance program, general fund, local

assistance account - 001 for the two thousand eight--two thousand nine state fiscal year. The non-federal share of the adjustments for the period October first, two thousand nine through December thirty-first, two thousand nine shall be allocated by the director of the budget from an appropriation for the medical assistance program, general fund, local assistance account - 001 for the two thousand nine--two thousand ten state fiscal year.

(ii) Forty percent shall be allocated for equal distribution to such facilities, reduced by the amount, if any, that a distribution exceeds forty percent of a facility's uncompensated care need as defined in paragraph (b) of subdivision two of section two thousand eight hundred seven-p of the public health law. Any funds allocated but not distributed in accordance with this subparagraph shall be added to those amounts distributed in accordance with subparagraph (iii) of this paragraph.

(iii) Sixty percent, plus any funds allocated and not distributed in accordance with subparagraph (ii) of this paragraph, shall be allocated for distribution to such facilities pursuant to the methodology described in paragraph (b) of subdivision two and subparagraph (i) of paragraph (b) of subdivision four of section two thousand eight hundred seven-p of the public health law, provided, however, that the amount paid pursuant to this allocation for each such facility shall equal the facility's proportional share of the total nominal payment amounts calculated under this section of all such facilities multiplied by the total funds allocated for such payments.

(iv) There shall be no local share in these payments.

(b) Notwithstanding the provisions of subdivision one of section three hundred sixty-eight-a of this title, there shall be paid to each social services district the full amount expended on behalf of the department of health for medical assistance furnished pursuant to the provisions of this section, after first deducting therefrom any federal funds properly received or to be received on account thereof.

3. (a) For periods prior to January first, two thousand eight, a covered provider described in subdivision one of this section shall be qualified to receive a supplemental payment only if its number of medicaid visits for patient care services in the base year described in

subparagraph (ii) of paragraph (b) of this subdivision equals or exceeds twenty-five percent of its total number of visits for patient care services and its number of medicaid visits for patient care services for medicaid managed care enrollees equals or exceeds three percent of its total number of medicaid visits during the base year. For periods on and after January first, two thousand eight, a covered provider described in subdivision one of this section shall be qualified to receive a supplemental payment only if it has in place during such period an operational electronic health record system that meets such standards as may be established by the commissioner of health and its number of medicaid visits for patient care services in the base year described in subparagraph (ii) of paragraph (b) of this subdivision equals or exceeds twenty-five percent of its total number of visits for patient care services during the base year or its number of medicaid visits combined with its number of uninsured visits for patient care services in the base year described in subparagraph (ii) of paragraph (b) of this subdivision equals or exceeds thirty percent of its total number of visits for patient care services during the base year.

(b) (i) For periods prior to January first, two thousand eight, each qualified provider described in paragraph (a) of this subdivision shall receive a supplemental payment equal to such provider's proportional share of the total funds allocated pursuant to this section, based upon the ratio of its visits from medical assistance recipients enrolled in managed care during the base year to the total number of visits to all such qualified providers by medical assistance recipients enrolled in managed care during the base year. For periods on and after January first, two thousand eight, each qualified provider described in paragraph (a) of this subdivision shall receive a supplemental payment equal to such provider's proportional share of the total funds allocated pursuant to this section, based upon the ratio of its visits from medical assistance recipients during the base year to the total number of visits from medical assistance recipients to all such qualified providers during the base year.

(ii) For periods prior to January first, two thousand eight, for purposes of the calculation described in this subdivision, the base year will be two thousand, and the commissioner of health shall utilize data as reported on the 2000 AHCF-1 cost report initially submitted by

covered providers to the department of health on or about August seventeenth, two thousand one. For periods on and after January first, two thousand eight, for purposes of the calculation described in this subdivision, the base year will be two years prior to the grant year, and the commissioner of health shall utilize data as reported on AHCF-1 cost report submitted by covered providers to the department of health for such base year.

4. Payments made pursuant to this section shall constitute additional reimbursement to qualified providers and shall not be used to reduce levels of other funding provided to qualified providers by governmental agencies.

5. (a) The commissioner of health shall make medical assistance payments to qualified providers from funds made available pursuant to the provisions of this section contingent upon the receipt of all federal approvals necessary and subject to the availability of federal financial participation under title XIX of the federal social security act for the transitional supplemental payments. In the event such federal approval is not received prior to March thirty-first, two thousand two, for adjustments for the period February first, two thousand two through March thirty-first, two thousand two and prior to October first, two thousand two for adjustments for the period October first, two thousand two through December thirty-first, two thousand two and prior to October first, two thousand three for adjustments for the period October first, two thousand three through December thirty-first, two thousand three, and prior to October first, two thousand five for adjustments for the period April first, two thousand five through June thirtieth, two thousand five, and prior to October first, two thousand six for adjustments for the period October first, two thousand six through December thirty-first, two thousand six, and prior to October first, two thousand seven for adjustments for the period October first, two thousand seven through December thirty-first, two thousand seven, and prior to October first, two thousand eight for adjustments for the period October first, two thousand eight through December thirty-first, two thousand eight, and prior to October first, two thousand nine for adjustments for the period October first, two thousand nine through

December thirty-first, two thousand nine, the commissioner of health shall make medical assistance payments to qualified providers consisting of the state share amount available for purposes of this section and apportioned in accordance with subdivisions two and three of this section. In the event such federal approval is denied, such state share amount payments shall be deemed to be grants to such qualified providers and such qualified providers shall not be eligible to receive any other payments pursuant to this section.

(b) The commissioner of health shall take all steps necessary and shall use best efforts to secure federal financial participation under title XIX of the social security act, for the purposes of this section, including the prompt submission of appropriate amendments to the title XIX state plan.

*** § 364-jj. Special advisory review panel on Medicaid managed care.**

(a) There is hereby established a special advisory review panel on Medicaid managed care. The panel shall consist of sixteen members who shall be appointed as follows: six by the governor, one of which shall serve as the chair; four each by the temporary president of the senate and the speaker of the assembly; and one each by the minority leader of the senate and the minority leader of the assembly. At least three members of such panel shall be members of the joint advisory panel established under section 13.40 of the mental hygiene law. The panel shall include a consumer representative for individuals with behavioral health needs, a consumer representative for individuals who are dually eligible for medicare and Medicaid, a representative of entities that provide or arrange for the provision of services to individuals with behavioral health needs, and a representative of entities that provide or arrange for the provision of services to individuals who are dually eligible for medicare and Medicaid. Members shall serve without compensation but shall be reimbursed for appropriate expenses. The department shall provide technical assistance and access to data as is required for the panel to effectuate the mission and purposes established herein.

(b) The panel shall:

(i) determine whether there is sufficient managed care provider

participation in the Medicaid managed care program;

(ii) determine whether managed care providers meet proper enrollment targets that permit as many Medicaid recipients as possible to make their own health plan decisions, thus minimizing the number of automatic assignments;

(iii) review the phase-in schedule for enrollment, of managed care providers under both the voluntary and mandatory programs;

(iv) assess the impact of managed care provider marketing and enrollment strategies, and the public education campaign conducted in New York city, on enrollees participation in Medicaid managed care plans;

(v) evaluate the adequacy of managed care provider capacity by reviewing established capacity measurements and monitoring actual access to plan practitioners;

(vi) examine the cost implications of populations excluded and exempted from Medicaid managed care;

(vii) evaluate the adequacy and appropriateness of program materials;

(viii) examine trends in service denials;

(ix) assess the access to care for people with disabilities;

(x) in accordance with the recommendations of the joint advisory council established pursuant to section 13.40 of the mental hygiene law, advise the commissioners of health and developmental disabilities with respect to the oversight of DISCOs and of health maintenance organizations and managed long term care plans providing services authorized, funded, approved or certified by the office for people with developmental disabilities, and review all managed care options provided to persons with developmental disabilities, including: the adequacy of support for habilitation services; the record of compliance with requirements for person-centered planning, person-centered services and community integration; the adequacy of rates paid to providers in accordance with the provisions of paragraph 1 of subdivision four of section forty-four hundred three of the public health law, paragraph (a-2) of subdivision eight of section forty-four hundred three of the public health law or paragraph (a-2) of subdivision twelve of section forty-four hundred three-f of the public health law; and the quality of life, health, safety and community integration of persons with developmental disabilities enrolled in managed care; and

(xi) examine other issues as it deems appropriate.

(c) Commencing January first, nineteen hundred ninety-seven and quarterly thereafter the panel shall submit a report regarding the status of Medicaid managed care in the state and provide recommendations if it deems appropriate to the governor, the temporary president and the minority leader of the senate, and the speaker and the minority leader of the assembly.

* NB Effective until December 31, 2027

* § 364-jj. Special advisory review panel on Medicaid managed care.

(a) There is hereby established a special advisory review panel on Medicaid managed care. The panel shall consist of nine members who shall be appointed as follows: three by the governor, one of which shall serve as the chair; two each by the temporary president of the senate and the speaker of the assembly; and one each by the minority leader of the senate and the minority leader of the assembly. All members shall be appointed no later than September first, nineteen hundred ninety-six. Members shall serve without compensation but shall be reimbursed for appropriate expenses. The department shall provide technical assistance and access to data as is required for the panel to effectuate the mission and purposes established herein.

(b) The panel shall:

(i) determine whether there is sufficient managed care provider participation in the Medicaid managed care program;

(ii) determine whether managed care providers meet proper enrollment targets that permit as many Medicaid recipients as possible to make their own health plan decisions, thus minimizing the number of automatic assignments;

(iii) review the phase-in schedule for enrollment, of managed care providers under both the voluntary and mandatory programs;

(iv) assess the impact of managed care provider marketing and enrollment strategies, and the public education campaign conducted in New York city, on enrollees participation in Medicaid managed care plans;

(v) evaluate the adequacy of managed care provider capacity by reviewing established capacity measurements and monitoring actual access to plan practitioners;

(vi) examine the cost implications of populations excluded and

exempted from Medicaid managed care; and

(vii) examine other issues as it deems appropriate.

(c) Commencing January first, nineteen hundred ninety-seven and quarterly thereafter the panel shall submit a report regarding the status of Medicaid managed care in the state and provide recommendations if it deems appropriate to the governor, the temporary president and the minority leader of the senate, and the speaker and the minority leader of the assembly.

* NB Effective December 31, 2027

§ 364-kk. Condition of Participation. 1. Notwithstanding any provision of law to the contrary, in addition to the requirements for participation in the medical assistance program as may be required to be met by nursing facilities and assisted living programs, such facilities and programs, adult homes and enriched housing programs receiving payment under this chapter shall enter into arrangements with social services districts to admit, on a priority basis, a number of individuals eligible to have medical assistance paid on their behalf who are otherwise appropriate for nursing facility or other long-term residential care, as described in this section, and whose health and safety reasonably cannot be maintained in their own homes by the provision of personal care services, home health services, or other home and community-based services, as determined by the local social services official pursuant to standards promulgated by the department pursuant to section three hundred sixty-seven-m of this chapter.

2. The department shall by regulation establish a method or formula for determining a fair and equitable distribution of priority admissions under this section in order that all providers of nursing home and long-term residential care services share the responsibility for accepting placements required under subdivision one hereof, and accept such placements, and that no one provider of nursing facility or long-term residential care, group or classification thereof is required to accept a number of such placements as would jeopardize the profitability or viability of such provider, group of providers or classification of providers, or as would otherwise unduly burden or

impair the operation, character or continuation of such provider, group of providers, or classification of provider.

3. The commissioners of health and social services shall monitor the implementation of this section and, on or before March first, nineteen hundred ninety-six, report to the governor and legislature on such implementation and the effects thereof and shall include recommendations for continuation or other modifications to the provisions of this section.

*** § 364-m. Statewide patient centered medical home program.** 1. The commissioner of health is authorized to certify certain clinicians and clinics as health care homes in order to improve health outcomes and efficiency through patient care continuity and coordination of health services. These providers will be eligible for enhanced payments for services provided to: recipients eligible for Medicaid fee-for-service; enrollees eligible for Medicaid managed care; enrollees eligible for and enrolled in Family Health Plus organizations pursuant to title eleven-D of this article ("Family Health Plus"); and enrollees eligible for and enrolled in Child Health Plus. As used in this section "clinic" means a general hospital providing outpatient care or a diagnostic and treatment center, licensed under article twenty-eight of the public health law.

2. By December first, two thousand nine, the commissioner of health shall develop and implement standards of certification for patient centered medical homes for Medicaid fee-for-service and Medicaid managed care, Family Health Plus and Child Health Plus programs. In developing such standards, the commissioner of health shall: (a) consider existing standards developed by national accrediting and professional organizations; and (b) consult with national and local organizations working on medical home models, physicians, hospitals, clinics, health plans and consumers and their representatives.

3. To maintain their certification, patient centered medical homes must: (a) renew their certification at a frequency determined by the commissioner of health; and (b) provide data to the department of health

and to health plans in which the patient is enrolled to permit the commissioner of health to evaluate the impact of patient centered medical homes on quality, outcomes and cost.

4. Subject to the availability of funding and federal financial participation, the commissioner of health is authorized:

(a) To pay enhanced rates of payment to clinics and clinicians that are certified as patient centered medical homes under this section. Such enhancements may be tiered based on the level of standard achieved by the clinician or clinic; and

(b) To pay additional amounts for patient centered medical homes that meet specific process or outcome standards specified by the commissioner of health.

5. By December thirty-first, two thousand twelve, the commissioner of health shall report to the governor and the legislature on the impact of the statewide patient centered medical home program on quality, cost and outcomes for enrollees in Medicaid fee-for-service, Medicaid managed care, Family Health Plus and Child Health Plus.

* NB Repealed April 1, 2028

§ 364-n. Diabetes and chronic disease self-management pilot program.

The commissioner of health may establish a diabetes and chronic disease self-management pilot program in one or more counties or regions of the state for the purpose of improving clinical outcomes. Payments under such program may be made for education, consultation, and peer support services for persons with chronic health conditions, as defined by the commissioner, to be eligible to receive such services. The commissioner is authorized to establish fees for such counseling services, subject to the approval of the director of the division of the budget. The provisions of this section shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation for the costs of services provided under this section.

§ 365. Responsibility for assistance. 1. Subject to supervision by the department: (a) each public welfare district shall furnish medical assistance to the persons eligible therefor who reside in its territory, except to persons for whom another public welfare district would be responsible under the provisions of paragraphs (b), (c), (d) or (g) of subdivision five of section sixty-two and other provisions of this chapter, and except to persons for whom provision is made hereinafter in subdivision two. Temporary absence, within or without the state, of such persons from such territory shall not effect their eligibility for such assistance;

(b) each public welfare district shall also be responsible for furnishing medical assistance to eligible persons found in its territory, who are temporarily in the state;

(c) each public welfare district, in any case in which the appropriate medical care and services are not available within such district, shall make appropriate arrangements, including the provision of transportation, for obtaining such medical care and services outside such district;

(d) each public welfare district may furnish all or any part of the medical assistance required to be furnished pursuant to this title, either directly or by contract or agreement.

2. Any inconsistent provision of this chapter or other law notwithstanding, the department shall be responsible for furnishing medical assistance to eligible individuals: (a) who are sixty-five years of age or older and who are patients in either state hospitals for the mentally disabled operated by the state department of mental hygiene or state hospitals for the treatment of tuberculosis operated pursuant to the provisions of the public health law; (b) who are under twenty-one years of age and who are receiving psychiatric services in such state hospitals for the mentally disabled which services conform to the state plan implementive of this title and which a team consisting of physicians and other qualified personnel has determined are necessary on an in-patient basis and can reasonably be expected to improve the condition requiring such services to the extent that eventually such services will no longer be necessary; in the case of a person who, during the course of hospitalization attains the age of twenty-one, such

services may continue until he reaches the age of twenty-two; (c) who are patients in that part of a public institution operated for the care of individuals with developmental disabilities that has been approved pursuant to law as a hospital or nursing home; (d) who are under care and treatment for drug dependence in a facility, or part thereof, operated pursuant to the provisions of the mental hygiene law if and so long as federal aid is available therefor; (e) who are under care in a hospital while they are on release from an institution in the state department of mental hygiene or who are drug dependent persons under care in a hospital while they are on release from a drug abuse treatment facility or part thereof operated in compliance with applicable provisions of law and supervised by the state division of substance abuse services, for the purpose of receiving care in such hospital. The department may at its option discharge such responsibility, in whole or in part, through social services districts designated to act as agents of the department. While so designated, a social services district shall act as agent of the department and shall be entitled to reimbursement as provided in section three hundred sixty-eight-a of this title.

3. Any inconsistent provision of this chapter or other law notwithstanding, the department shall be responsible for furnishing medical assistance to eligible veterans and their dependents (a) in that part of the New York state home for veterans and their dependents at Oxford that has been approved pursuant to law as a nursing home, and (b) in a hospital while on release from that home for the purpose of receiving care in such hospital. The department may at its option discharge such responsibility, in whole or in part, through social services districts designated to act as agents of the department. While so designated, a social services district shall act as agent of the department and shall be entitled to reimbursement as provided in section three hundred sixty-eight-a of this title.

4. Any inconsistent provision of this chapter or other law notwithstanding, the department shall be responsible for furnishing medical assistance to eligible individuals: (a) who are patients in that part of a public institution operated for the care of individuals with developmental disabilities that has been approved pursuant to law as an

intermediate care facility or who are participating in a program operated by the department of mental hygiene or by a voluntary agency under an agreement with such department, in that part of such a facility that has been approved as a day treatment program in accordance with the regulations of the state commissioner of mental hygiene; (b) who are veterans and their dependents in that part of the New York state home for veterans and their dependents at Oxford that has been approved pursuant to law as an intermediate care facility; (c) such persons under care in a hospital while they are on release from such home for the purpose of receiving care in such hospital; and (d) who are included in either one of the model waivers or the general waiver described in subdivisions seven and nine of section three hundred sixty-six of this chapter. The department may, at its option, discharge such responsibility, in whole or in part, through social services districts designated to act as agents of the department. While so designated, a social services district shall act as agent of the department and shall be entitled to reimbursements as provided in section three hundred sixty-eight-a of this chapter.

5. Any inconsistent provision of this chapter or other law notwithstanding the department shall be responsible for determining eligibility of and furnishing medical assistance to eligible persons when such person is in need of such medical assistance at the time he is discharged or released or conditionally released from a state department of mental hygiene facility pursuant to the mental hygiene law and when such person was admitted to such facility and has been a patient therein for a continuous period of five or more years prior to his discharge or release. For purposes of determining whether a person has been a patient in such a facility for a continuous period of five years or more, if a person who has been discharged or released from such a facility is thereafter returned to such a facility within ninety days of the discharge or release, the period of time between such discharge or release and such return shall not constitute an interruption of, and shall be counted as part of, the continuous period. The department may, at its option, discharge its responsibility for eligibility determinations or for providing medical assistance or both, in whole or in part, through designated social services districts. While so

designated, a social services district shall act as agent of the department and shall be entitled to reimbursement of the full amount expended on behalf of the department as provided in section three hundred sixty-eight-a of this article.

6. Any inconsistent provisions of this chapter or other law notwithstanding, the department shall be responsible for determining eligibility for medical assistance for a person for whom the full cost of such assistance is reimbursable by the state and who is in need of such assistance at the time he is discharged or released or conditionally released from a state hospital operated by the office of mental health or a facility operated by the division of alcoholism and alcohol abuse located on the grounds of such hospital. The department may at its option discharge such responsibility, in whole or in part, through social services districts designated to act as agents of the department. While so designated, a social services district shall act as agent of the department and shall be entitled to reimbursement as provided in section three hundred sixty-eight-a of this title.

7. Any inconsistent provision of this chapter or other law notwithstanding, the department may, with the consent of the commissioner of mental health, designate the office of mental health as its agent to discharge its responsibility, or so much of its responsibility as is permitted by federal law, for determining eligibility for medical assistance pursuant to subdivisions two, five, six and eight of this section.

8. Any inconsistent provision of this chapter or other law notwithstanding, the department shall be responsible for determining eligibility of and furnishing medical assistance to eligible persons who reside in residential care centers for adults or community residences operated by the office of mental health. The department may, at its option, discharge its responsibility for eligibility determinations or for providing medical assistance or both, in whole or in part, through designated social services districts. While so designated, a social services district shall act as agent of the department and shall be entitled to reimbursement as provided in section three hundred

sixty-eight-a of this article.

9. Any inconsistent provision of this chapter or other law notwithstanding, the social services district in which an eligible major public general hospital is physically located shall be responsible for the supplementary bad debt and charity care adjustment component of the rate of payment for such major public general hospital (as determined in accordance with subdivision fourteen-a of section twenty-eight hundred seven-c of the public health law) for all inpatient hospital services provided by such major public general hospital in accordance with section three hundred sixty-five-a of this article, regardless of whether another social services district or the department may otherwise be responsible for furnishing medical assistance to the eligible persons receiving such inpatient services.

10. Any inconsistent provision of this chapter or other law notwithstanding, the social services district in which an eligible public general hospital is physically located shall be responsible for the supplementary low income patient adjustment component of the rate of payment for such public general hospital (as determined in accordance with subdivision fourteen-d of section twenty-eight hundred seven-c of the public health law) for all inpatient hospital services provided by such public general hospital in accordance with section three hundred sixty-five-a of this article, regardless of whether another social services district or the department may otherwise be responsible for furnishing medical assistance to the eligible persons receiving such inpatient services.

11. Any inconsistent provision of this chapter or other law notwithstanding, the social services district in which an eligible public residential health care facility is physically located shall be responsible for the adjustment component of the payments for such public residential health care facility as determined in accordance with subdivision twelve of section twenty-eight hundred eight of the public health law for all residential health care facility services provided by such public residential health care facility in accordance with section three hundred sixty-five-a of this article, regardless of whether

another social services district or the department may otherwise be responsible for furnishing medical assistance to the eligible persons receiving such services.

12. Any inconsistent provision of this chapter or other law notwithstanding, the social services district in which an eligible public general hospital is physically located shall be responsible for the public general hospital indigent care adjustment component of the payments to such public general hospital (as determined in accordance with subdivision fourteen-f of section twenty-eight hundred seven-c of the public health law) for all inpatient hospital services provided by such public general hospital in accordance with section three hundred sixty-five-a of this article, regardless of whether another social services district or the department may otherwise be responsible for furnishing medical assistance to the eligible persons receiving such inpatient services.

§ 365-a. Character and adequacy of assistance. The amount, nature and manner of providing medical assistance for needy persons shall be determined by the public welfare official with the advice of a physician and in accordance with the local medical plan, this title, and the regulations of the department.

1. "Benchmark coverage" shall mean payment of part or all of the cost of medically necessary medical, dental, and remedial care, services, and supplies described in subdivision two of this section, and to the extent not included therein, any essential benefits as defined in 42 U.S.C. 18022(b), with the exception of institutional long term care services; such care, services and supplies shall be provided consistent with the managed care program described in section three hundred sixty-four-j of this title.

2. "Standard coverage" shall mean payment of part or all of the cost of medically necessary medical, dental and remedial care, services and supplies, as authorized in this title or the regulations of the department, which are necessary to prevent, diagnose, correct or cure

conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with such person's capacity for normal activity, or threaten some significant handicap and which are furnished an eligible person in accordance with this title and the regulations of the department. Such care, services and supplies shall include the following medical care, services and supplies, together with such medical care, services and supplies provided for in subdivisions three, four and five of this section, and such medical care, services and supplies as are authorized in the regulations of the department:

(a) services of qualified physicians, dentists, nurses, and private duty nursing services shall be further subject to the provisions of section three hundred sixty-seven-o of this chapter, optometrists, and other related professional personnel;

(b) care, treatment, maintenance and nursing services in hospitals, nursing homes that qualify as providers in the medicare program pursuant to title XVIII of the federal social security act, infirmaries or other eligible medical institutions, and health-related care and services in intermediate care facilities, while operated in compliance with applicable provisions of this chapter, the public health law, the mental hygiene law and other laws, including any provision thereof requiring an operating certificate or license, or where such facilities are not conveniently accessible, in hospitals located without the state; provided, however, that care, treatment, maintenance and nursing services in nursing homes or in intermediate care facilities, including those operated by the state department of mental hygiene or any other state department or agency, shall, for persons who are receiving or who are eligible for medical assistance under provisions of subparagraph four of paragraph (a) of subdivision one of section three hundred sixty-six of this chapter, be limited to such periods of time as may be determined necessary in accordance with a utilization review procedure established by the state commissioner of health providing for a review of medical necessity, in the case of skilled nursing care, every thirty days for the first ninety days and every ninety days thereafter, and in the case of care in an intermediate care facility, at least every six months, or more frequently if indicated at the time of the last review, consistent with federal utilization review requirements; provided, further, that in-patient care, services and supplies in a general

hospital shall not exceed such standards as the commissioner of health shall promulgate but in no case greater than twenty days per spell of illness during which all or any part of the cost of such care, services and supplies are claimed as an item of medical assistance, unless it shall have been determined in accordance with procedures and criteria established by such commissioner that a further identifiable period of in-patient general hospital care is required for particular patients to preserve life or to prevent substantial risks of continuing disability; provided further, that in-patient care, services and supplies in a general hospital shall, in the case of a person admitted to such a facility on a Friday or Saturday, be deemed to include only those in-patient days beginning with and following the Sunday after such date of admission, unless such care, services and supplies are furnished for an actual medical emergency or pre-operative care for surgery as provided in paragraph (d) of subdivision five of this section, or are furnished because of the necessity of emergency or urgent surgery for the alleviation of severe pain or the necessity for immediate diagnosis or treatment of conditions which threaten disability or death if not promptly diagnosed or treated; provided, however, in-patient days of a general hospital admission beginning on a Friday or a Saturday shall be included commencing with the day of admission in a general hospital which the commissioner or his designee has found to be rendering and which continues to render full service on a seven day a week basis which determination shall be made after taking into consideration such factors as the routine availability of operating room services, diagnostic services and consultants, laboratory services, radiological services, pharmacy services, staff patterns consistent with full services and such other factors as the commissioner or his designee deems necessary and appropriate; provided, further, that in-patient care, services and supplies in a general hospital shall not include care, services and supplies furnished to patients for certain uncomplicated procedures which may be performed on an out-patient basis in accordance with regulations of the commissioner of health, unless the person or body designated by such commissioner determines that the medical condition of the individual patient requires that the procedure be performed on an in-patient basis;

(c) out-patient hospital or clinic services in facilities operated in

compliance with applicable provisions of this chapter, the public health law, the mental hygiene law and other laws, including any provisions thereof requiring an operating certificate or license, including facilities authorized by the appropriate licensing authority to provide integrated mental health services, and/or alcoholism and substance abuse services, and/or physical health services, and/or services to persons with developmental disabilities, when such services are provided at a single location or service site, or where such facilities are not conveniently accessible, in any hospital located within the state and care and services in a day treatment program operated by the department of mental hygiene or by a voluntary agency under an agreement with such department in that part of a public institution operated and approved pursuant to law as an intermediate care facility for persons with developmental disabilities; and provided, that the commissioners of health, mental health, alcoholism and substance abuse services and the office for people with developmental disabilities may issue regulations, including emergency regulations promulgated prior to October first, two thousand fifteen that are required to facilitate the establishment of integrated services clinics. Any such regulations promulgated under this paragraph shall be described in the annual report required pursuant to section forty-five-c of part A of chapter fifty-six of the laws of two thousand thirteen;

(d) home health services provided in a recipient's home and prescribed by a physician including services of a nurse provided on a part-time or intermittent basis rendered by an approved home health agency or if no such agency is available, by a registered nurse, licensed to practice in this state, acting under the written orders of a physician and home health aide service by an individual or shared aide provided by an approved home health agency when such services are determined to be cost effective and appropriate to meet the recipient's needs for assistance subject to the provisions of section three hundred sixty-seven-j and section three hundred sixty-seven-o of this title;

(e) (i) personal care services, including personal emergency response services, shared aide and an individual aide, subject to the provisions of subparagraphs (ii), (iii), (iv), (v) and (vi) of this paragraph, furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for individuals

with intellectual disabilities, or institution for mental disease, as determined to meet the recipient's needs for assistance when cost effective and appropriate, and when prescribed by a qualified independent physician selected or approved by the department of health, in accordance with the recipient's plan of treatment and provided by individuals who are qualified to provide such services, who are supervised by a registered nurse and who are not members of the recipient's family, and furnished in the recipient's home or other location;

(ii) the commissioner is authorized to adopt standards, pursuant to emergency regulation, for the provision, management and assessment of services available under this paragraph for individuals whose need for such services exceeds a specified level to be determined by the commissioner, and who with the provision of such services is capable of safely remaining in the community in accordance with the standards set forth in *Olmstead v. LC* by Zimring, 527 US 581 (1999) and consider whether an individual is capable of safely remaining in the community;

(iii) the commissioner shall provide assistance to persons receiving services under this paragraph who are transitioning to receiving care from a managed long term care plan certified pursuant to section forty-four hundred three-f of the public health law, consistent with subdivision thirty-one of section three hundred sixty-four-j of this title;

(iv) personal care services available pursuant to this paragraph shall not exceed eight hours per week for individuals whose needs are limited to nutritional and environmental support functions;

(v) subject to the availability of federal financial participation, personal care services other than personal emergency response services available pursuant to this paragraph shall be available only to individuals assessed as needing at least limited assistance with physical maneuvering with more than two activities of daily living, or for individuals with a dementia or Alzheimer's diagnosis, assessed as needing at least supervision with more than one activity of daily living, as defined and determined by using an evidenced based validated assessment instrument approved by the commissioner and in accordance with regulations of the department and any applicable state and federal laws by an independent assessor. The provisions of this subparagraph

shall only apply to individuals who receive an initial authorization for such services on or after October first, two thousand twenty;

(vi) In establishing any standards for the provision, management or assessment of personal care services the state shall meet the standards set forth in *Olmstead v. LC* by Zimring, 527 US 581 (1999) and consider whether an individual is capable of safely remaining in the community;

(f) preventive, prophylactic and other routine dental care, services and supplies;

(g) sickroom supplies, eyeglasses, prosthetic appliances and dental prosthetic appliances furnished in accordance with the regulations of the department; provided further that: (i) the commissioner of health is authorized to implement a preferred diabetic supply program wherein the department of health will receive enhanced rebates from preferred manufacturers of glucometers and test strips, and may subject non-preferred manufacturers' glucometers and test strips to prior authorization under section two hundred seventy-three of the public health law; (ii) enteral formula therapy and nutritional supplements are limited to coverage only for nasogastric, jejunostomy, or gastrostomy tube feeding, for treatment of an inborn metabolic disorder, or to address growth and development problems in children, or, subject to standards established by the commissioner, for persons with a diagnosis of HIV infection, AIDS or HIV-related illness or other diseases and conditions; (iii) prescription footwear and inserts are limited to coverage only when used as an integral part of a lower limb orthotic appliance, as part of a diabetic treatment plan, or to address growth and development problems in children; (iv) compression and support stockings are limited to coverage only for pregnancy or treatment of venous stasis ulcers; and (v) the commissioner of health is authorized to implement an incontinence supply utilization management program to reduce costs without limiting access through the existing provider network, including but not limited to single or multiple source contracts or, a preferred incontinence supply program wherein the department of health will receive enhanced rebates from preferred manufacturers of incontinence supplies, and may subject non-preferred manufacturers' incontinence supplies to prior approval pursuant to regulations of the department, provided any necessary approvals under federal law have been obtained to receive federal financial

participation in the costs of incontinence supplies provided pursuant to this subparagraph;

(g-1) drugs provided on an in-patient basis, those drugs contained on the list established by regulation of the commissioner of health pursuant to subdivision four of this section, and those drugs which may not be dispensed without a prescription as required by section sixty-eight hundred ten of the education law and which the commissioner of health shall determine to be reimbursable based upon such factors as the availability of such drugs or alternatives at low cost if purchased by a medicaid recipient, or the essential nature of such drugs as described by such commissioner in regulations, provided, however, that such drugs, exclusive of long-term maintenance drugs, shall be dispensed in quantities no greater than a thirty day supply or one hundred doses, whichever is greater; provided further that the commissioner of health is authorized to require prior authorization for any refill of a prescription when more than a ten day supply of the previously dispensed amount should remain were the product used as normally indicated, or in the case of a controlled substance, as defined in section thirty-three hundred two of the public health law, when more than a seven day supply of the previously dispensed amount should remain were the product used as normally indicated; provided further that the commissioner of health is authorized to require prior authorization of prescriptions of opioid analgesics in excess of four prescriptions in a thirty-day period in accordance with section two hundred seventy-three of the public health law; medical assistance shall not include any drug provided on other than an in-patient basis for which a recipient is charged or a claim is made in the case of a prescription drug, in excess of the maximum reimbursable amounts to be established by department regulations in accordance with standards established by the secretary of the United States department of health and human services, or, in the case of a drug not requiring a prescription, in excess of the maximum reimbursable amount established by the commissioner of health pursuant to paragraph (a) of subdivision four of this section;

(h) speech therapy, and when provided at the direction of a physician or nurse practitioner, physical therapy including related rehabilitative services and occupational therapy;

(i) laboratory and x-ray services; and

(j) transportation when essential and appropriate to obtain medical care, services and supplies otherwise available under the medical assistance program in accordance with this section, upon prior authorization, except when required in order to obtain emergency care, and when not otherwise available to the recipient free of charge or through a transportation program implemented pursuant to section three hundred sixty-five-h of this title and approved by the commissioner of health for which federal financial participation is claimed as an administrative cost;

* (k) care and services furnished by an entity offering a comprehensive health services plan, including an entity that has received a certificate of authority pursuant to sections forty-four hundred three, forty-four hundred three-a or forty-four hundred eight-a of the public health law (as added by chapter six hundred thirty-nine of the laws of nineteen hundred ninety-six) or a health maintenance organization authorized under article forty-three of the insurance law, to eligible individuals residing in the geographic area served by such entity, when such services are furnished in accordance with an agreement approved by the department which meets the requirements of federal law and regulations.

* NB Effective until December 31, 2029

* (k) care and services furnished by an entity offering a comprehensive health services plan to eligible individuals residing in the geographic area served by such entity, when such services are furnished in accordance with an agreement approved by the department which meets the requirements of federal law and regulations.

* NB Effective December 31, 2029

(l) care and services of podiatrists which care and services shall only be provided upon referral by a physician, nurse practitioner or certified nurse midwife in accordance with the program of early and periodic screening and diagnosis established pursuant to subdivision three of this section or to persons eligible for benefits under title XVIII of the federal social security act as qualified medicare beneficiaries in accordance with federal requirements therefor and private duty nurses which care and services shall only be provided in accordance with regulations of the department of health; provided, however, that private duty nursing services shall not be restricted when

such services are more appropriate and cost-effective than nursing services provided by a home health agency pursuant to section three hundred sixty-seven-l;

(m) hospice services provided by a hospice certified pursuant to article forty of the public health law, to the extent that federal financial participation is available, and, notwithstanding federal financial participation and any provision of law or regulation to the contrary, for hospice services provided pursuant to the hospice supplemental financial assistance program for persons with special needs as provided for in article forty of the public health law.

* (n) care and services of audiologists provided in accordance with regulations of the department of health.

* NB There are two par (n)'s

* (n) care, treatment, maintenance and rehabilitation services that would otherwise qualify for reimbursement pursuant to this chapter to persons suffering from alcoholism in alcoholism facilities or chemical dependence, as such term is defined in section 1.03 of the mental hygiene law, in inpatient chemical dependence facilities, services, or programs operated in compliance with applicable provisions of this chapter and the mental hygiene law, and certified by the office of alcoholism and substance abuse services, provided however that such services shall be limited to such periods of time as may be determined necessary in accordance with a utilization review procedure established by the commissioner of the office of alcoholism and substance abuse services and provided further, that this paragraph shall not apply to any hospital or part of a hospital as defined in section two thousand eight hundred one of the public health law.

* NB There are two par (n)'s

* (o) care and services furnished by a managed long term care plan or approved managed long term care demonstration pursuant to the provisions of section forty-four hundred three-f of the public health law to eligible individuals residing in the geographic area served by such entity, when such services are furnished in accordance with an agreement with the department of health and meet the applicable requirements of federal law and regulation.

* NB Repealed December 31, 2029

(p) targeted case management services provided to children who

(i) are eighteen years of age or under; and

(ii) either

(1) are physically disabled, according to the federal supplemental security income program criteria, including but not limited to a person who is multiply disabled; or

(2) have a developmental disability, as defined in subdivision twenty-two of section 1.03 of the mental hygiene law and demonstrate complex health needs as defined in paragraph c of subdivision seven of section three hundred sixty-six of this title; or

(3) have a mental illness, as defined in subdivision twenty of section 1.03 of the mental hygiene law and demonstrate complex health or mental health care needs as defined in paragraph d of subdivision nine of section three hundred sixty-six of this title; and

(iii) require the level of care provided by an intermediate care facility for the developmentally disabled, a nursing facility, a hospital or any other institution; and

(iv) are capable of being cared for in the community if provided with case management services and/or other services provided under this title; and

(v) are capable of being cared for in the community at less cost than in the appropriate institutional setting; and

(vi) are not receiving services under section three hundred sixty-seven-c of this title and for whom services provided under section three hundred sixty-seven-a of this title are not available or sufficient to support the children's care in the community.

(q) diabetes self-management training services for persons diagnosed with diabetes when such services are ordered by a physician, registered physician assistant, registered nurse practitioner, or licensed midwife and provided by a licensed, registered, or certified health care professional, as determined by the commissioner of health, who is certified as a diabetes educator by the National Certification Board for Diabetes Educators, or a successor national certification board, or provided by such a professional who is affiliated with a program certified by the American Diabetes Association, the American Association of Diabetes Educators, the Indian Health Services, or any other national accreditation organization approved by the federal centers for medicare and medicaid services; provided, however, that the provisions of this

paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this paragraph. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

(r) asthma self-management training services for persons diagnosed with asthma when such services are ordered by a physician, registered physician's assistant, registered nurse practitioner, or licensed midwife and provided by a licensed, registered, or certified health care professional, as determined by the commissioner of health, who is certified as an asthma educator by the National Asthma Educator Certification Board, or a successor national certification board; provided, however, that the provisions of this paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this paragraph. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

(s) smoking cessation counseling services; provided, however, that the provisions of this paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of such services.

(t) cardiac rehabilitation services when ordered by the attending physician and provided in a hospital-based or free-standing clinic in an area set aside for cardiac rehabilitation, or in a physician's office; provided, however, that the provisions of this paragraph relating to cardiac rehabilitation services shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of such services.

(u) screening, brief intervention, and referral to treatment of individuals at risk for substance abuse including referral to the appropriate level of intervention and treatment in a community setting; provided, however, that the provisions of this paragraph relating to screening, brief intervention, and referral to treatment services shall

not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in such costs.

(v) administration of vaccinations in a pharmacy by a certified pharmacist within his or her scope of practice.

(w) podiatry services for individuals with a diagnosis of diabetes mellitus; provided, however, that the provisions of this paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this paragraph.

(x)(i) lactation counseling services for pregnant and postpartum women when such services are ordered by a physician, physician assistant, nurse practitioner, or midwife and provided by a qualified lactation care provider, as determined by the commissioner of health; provided, however, that the provisions of this paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this paragraph. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

(ii) for the purposes of this paragraph, the following terms shall have the following meanings:

(1) "Qualified lactation care provider" shall mean a person who possesses current certification as a lactation care provider from a certification program accredited by a nationally recognized accrediting agency.

(2) "Nationally recognized accrediting agency" shall mean a nationally recognized accrediting agency designated by the commissioner; provided that the commissioner shall designate more than one agency.

(y) harm reduction counseling and services to reduce or minimize the adverse health consequences associated with drug use, provided by a qualified drug treatment program or community-based organization, as determined by the commissioner of health; provided, however, that the provisions of this paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services

provided pursuant to this paragraph. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

(z) hepatitis C wrap-around services to promote care coordination and integration when ordered by a physician, registered physician assistant, registered nurse practitioner, or licensed midwife, and provided by a qualified professional, as determined by the commissioner of health. Such services may include client outreach, identification and recruitment, hepatitis C education and counseling, coordination of care and adherence to treatment, assistance in obtaining appropriate entitlement services, peer support and other supportive services; provided, however, that the provisions of this paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this paragraph. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

** (aa) care and services furnished by a developmental disability individual support and care coordination organization (DISCO) that has received a certificate of authority pursuant to section forty-four hundred three-g of the public health law to eligible individuals residing in the geographic area served by such entity, when such services are furnished in accordance with an agreement approved by the department of health which meets the requirements of federal law and regulations.

* NB Repealed December 31, 2027

(bb) Subject to the availability of federal financial participation, services and supports authorized by the federal regulations governing the Home and Community-Based Attendant Services and Supports State Plan Option (Community First Choice) pursuant to 42 U.S.C. § 1396n(k).

(cc) care and services for surgical first assistant services provided by a registered nurse first assistant provided that: (i) the registered nurse first assistant is certified in operating room nursing; (ii) the services are within the scope of practice of a non-physician surgical first assistant; and (iii) the terms and conditions of the policy or contract otherwise provide for the coverage of the services. Nothing in

this paragraph shall be construed to prevent the medical management or utilization review of the services; prevent a policy or contract from requiring that services are to be provided through a network of participating providers who meet certain requirements for participation, including provider credentialing; or prohibit an insurer from providing a global or capitated payment or electing to directly reimburse a non-physician surgical first assistant for the services, as otherwise permitted by law.

(dd) pasteurized donor human milk (PDHM), which may include fortifiers as medically indicated, for inpatient use, for which a licensed medical practitioner has issued an order for an infant who is medically or physically unable to receive maternal breast milk or participate in breast feeding or whose mother is medically or physically unable to produce maternal breast milk at all or in sufficient quantities or participate in breast feeding despite optimal lactation support. Such infant shall: (i) have a documented birth weight of less than one thousand five hundred grams; or (ii) have a congenital or acquired condition that places the infant at a high risk for development of necrotizing enterocolitis; or (iii) have a congenital or acquired condition that may benefit from the use of donor breast milk as determined by the commissioner of health or his or her designee.

(ee) Medical assistance shall include the coverage of a set of services to ensure improved outcomes of women who are in the process of ovulation enhancing drugs, limited to the provision of such treatment, office visits, hysterosalpingogram services, pelvic ultrasounds, and blood testing; services shall be limited to those necessary to monitor such treatment. In the event that ninety percent federal financial participation for such services is not available, the state share of appropriations related to these services shall be used for a grant program intended to accomplish the purpose of this section.

(ff) evidence-based prevention and support services recognized by the federal Centers for Disease Control (CDC), provided by a community-based organization, and designed to prevent individuals at risk of developing diabetes from developing Type 2 diabetes.

* (gg) addiction and mental health services and supports provided by facilities licensed pursuant to article thirty-six of the mental hygiene law.

* NB There are 3 par (gg)'s

* (gg) all buprenorphine products, methadone or long acting injectable naltrexone for detoxification or maintenance treatment of a substance use disorder prescribed according to generally accepted national professional guidelines for the treatment of a substance use disorder. Such medication assisted treatment shall not be subject to any prior authorization mandate.

* NB There are 3 par (gg)'s

* (gg) care and services provided by mental health counselors and marriage and family therapists licensed pursuant to article one hundred sixty-three of the education law acting within their scope of practice, where such services would otherwise be covered under this title. Nothing in this paragraph shall be construed to modify or expand the scope of practice of a mental health counselor or marriage and family therapist licensed pursuant to article one hundred sixty-three of the education law.

* NB There are 3 par (gg)'s

(hh) The commissioner is authorized to establish one or more maternal health promotion pilot programs in one or more counties or regions of the state, for the purpose of providing Medicaid reimbursement of the prenatal maternal childbirth education and preparation classes for enrollees, and transportation to and from such classes, for the purpose of improving maternal outcomes and reducing maternal-infant mortality. The commissioner is authorized to establish fees for the reimbursement of such classes, subject to the approval of the state director of the budget.

(ii) Care and services provided by clinical social workers licensed pursuant to article one hundred fifty-four of the education law acting within their scope of practice, where such services would otherwise be covered under this title.

* (jj) pre-natal and postpartum care and services for the purpose of improving maternal health outcomes and reduction of maternal mortality when such services are recommended by a physician or other health care practitioner authorized under title eight of the education law, and provided by qualified practitioners. Such services shall include but not be limited to nutrition services provided by certified dietitians and certified nutritionists; care coordination, case management, and peer

support; patient navigation services; services by licensed clinical social workers; dyadic services; Bluetooth-enabled devices for remote patient monitoring; remote ultrasound scans; remote fetal non-stress tests and other services determined by the commissioner of health; provided, however, that the provisions of this paragraph shall not take effect unless there is federal financial participation. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

* NB There are 2 par (jj)'s

* (jj) applied behavior analysis, under article one hundred sixty-seven of the education law, provided by a person licensed, certified, or otherwise authorized to provide applied behavior analysis under that article.

* NB There are 2 par (jj)'s

* (kk) community health worker services which shall include, but not be limited to, culturally appropriate patient education, health care navigation, care coordination including the development of a care plan, patient advocacy, and support services for the management of chronic conditions for children under age twenty-one, and for adults with health-related social needs, when such services are recommended by a physician or other health care practitioner authorized under title eight of the education law, and provided by qualified community health workers, as determined by the commissioner of health; provided, however, that the provisions of this paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this paragraph. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

* NB There are 2 par (kk)'s

* (kk) care and services of nutritionists and dietitians certified pursuant to article one hundred fifty-seven of the education law acting within their scope of practice.

* NB There are 2 par (kk)'s

(ll) Chronic Disease Self-Management Program for persons diagnosed with arthritis when such services are ordered by a physician, registered physician's assistant, registered nurse practitioner, or licensed

midwife and provided by qualified educators, as determined by the commissioner of health, subject to federal financial participation. Nothing in this paragraph shall be construed to modify any licensure, certification or scope of practice provision under title eight of the education law.

(mm) (i) biomarker precision medical testing for the purposes of diagnosis, treatment, or appropriate management of, or ongoing monitoring to guide treatment decisions for, a recipient's disease or condition when one or more of the following recognizes the efficacy and appropriateness of biomarker precision medical testing for diagnosis, treatment, appropriate management, or guiding treatment decisions for a recipient's disease or condition:

(1) labeled indications for a test approved or cleared by the federal food and drug administration or indicated tests for a food and drug administration approved drug;

(2) centers for medicare and medicaid services national coverage determinations or medicare administrative contractor local coverage determinations; or

(3) nationally recognized clinical practice guidelines.

(ii) As used in this paragraph, the following terms shall have the following meanings:

(1) "Biomarker" means a characteristic that is measured as an indicator of normal biological processes, pathogenic processes, or responses to an exposure or intervention, including therapeutic interventions.

(2) "Biomarker precision medical testing" means the analysis of a patient's tissue, blood, or other biospecimen for the presence of a biomarker. Biomarker testing includes but is not limited to single-analyte tests and multi-plex panel tests performed at a participating in-network laboratory facility that is either CLIA certified or CLIA waived by the federal food and drug administration.

(3) "Nationally recognized clinical practice guidelines" means evidence-based clinical practice guidelines informed by a systematic review of evidence and an assessment of the benefits, and risks of alternative care options intended to optimize patient care developed by independent organizations or medical professional societies utilizing a transparent methodology and reporting structure and with a conflict of

interest policy.

(iii) Coverage of biomarker precision medical testing provided under this paragraph shall not require a deviation from the review for standard coverage or any existing process used to determine medical necessity.

(nn) (i) Medical assistance shall include the coverage of the following services for individuals when a medical treatment may directly or indirectly cause iatrogenic infertility, which is an impairment of fertility resulting from surgery, radiation, chemotherapy, sickle cell treatment, or other medical treatment affecting reproductive organs or processes:

(1) standard fertility preservation services to prevent or treat infertility, which shall include medically necessary collection, freezing, preservation and storage of oocytes or sperm, and such other standard services that are not experimental or investigational; together with prescription drugs, which shall be limited to federal food and drug administration approved medications and subject to medical assistance program coverage requirements. In vitro fertilization (IVF) shall not be covered as a fertility preservation service; and

(2) coverage of the costs of storage of oocytes or sperm shall be subject to continued medical assistance program eligibility for individuals when a medical treatment may directly or indirectly cause iatrogenic infertility, and shall terminate upon any discontinuance of medical assistance eligibility.

(ii) In the event that federal financial participation for such fertility preservation services is not available, medical assistance shall not include coverage of these services.

3. Any inconsistent provisions of this section notwithstanding, medical assistance shall include:

(a) early and periodic screening and diagnosis of eligible persons under six years of age and, in accordance with federal law and regulations, early and periodic screening and diagnosis of eligible persons under twenty-one years of age to ascertain physical and mental disabilities; and

(b) care and treatment of disabilities and conditions discovered by such screening and diagnosis including such care, services and supplies

as the commissioner shall by regulation require to the extent necessary to conform to applicable federal law and regulations.

(c) screening, diagnosis, care and treatment of disabilities and conditions discovered by such screening and diagnosis of eligible persons ages three to twenty-one, inclusive, including such care, services and supplies as the commissioner shall by regulation require to the extent necessary to conform to applicable federal law and regulations, provided that such screening, diagnosis, care and treatment shall include the provision of evaluations and related services rendered pursuant to article eighty-nine of the education law and regulations of the commissioner of education by persons qualified to provide such services thereunder.

(d) family planning services and twelve months of supplies for eligible persons of childbearing age, including children under twenty-one years of age who can be considered sexually active, who desire such services and supplies, in accordance with the requirements of federal law and regulations and the regulations of the department. Coverage of prescription contraceptives shall include a twelve-month supply that may be dispensed at one time or up to twelve times within one year from the date of the prescription. No person shall be compelled or coerced to accept such services or supplies.

4. Any inconsistent provision of law notwithstanding, medical assistance shall not include, unless required by federal law and regulation as a condition of qualifying for federal financial participation in the medicaid program, the following items of care, services and supplies:

(a) drugs which may be dispensed without a prescription as required by section sixty-eight hundred ten of the education law; provided, however, that the state commissioner of health may by regulation specify certain of such drugs which may be reimbursed as an item of medical assistance in accordance with the price schedule established by such commissioner. Notwithstanding any other provision of law, modifications to the list of drugs reimbursable under this paragraph may be filed as regulations by the commissioner of health without prior notice and comment; provided, however, that the department will notify enrollees of any eliminations to the list of drugs reimbursable under this paragraph at least sixty

days prior to the removal of such drug. Such eliminations shall be referred to the drug utilization review board established pursuant to section three hundred sixty-nine-bb of this article for recommendation prior to elimination from the list;

(a-1) (i) a brand name drug for which a multi-source therapeutically and generically equivalent drug, as determined by the federal food and drug administration, is available, unless previously authorized by the department of health. The commissioner of health is authorized to exempt, for good cause shown, any brand name drug from the restrictions imposed by this subparagraph;

(ii) notwithstanding the provisions of subparagraph (i) of this paragraph, the commissioner is authorized to deny reimbursement for a generic equivalent, including a generic equivalent that is on the preferred drug list or the clinical drug review program, when the net cost of the brand name drug, after consideration of all rebates, is less than the cost of the generic equivalent, unless prior authorization is obtained under section two hundred seventy-three of the public health law;

(a-2) drugs which may not be dispensed without a prescription as required by section sixty-eight hundred ten of the education law, and which are non preferred drugs pursuant to section two hundred seventy-two of the public health law, or the clinical drug review program under section two hundred seventy-four of the public health law, unless prior authorization is granted or not required;

(b) care and services of chiropractors and supplies related to the practice of chiropractic, except as provided for by the commissioner pursuant to a pilot program approved under federal law and regulation;

(c) care and services of an optometrist for using drugs in excess of the maximum reimbursable amounts for optometric care and services established by the commissioner and approved by the director of the budget;

(d) any medical care, services or supplies furnished outside the state, except, when prior authorized in accordance with department regulations or for care, services and supplies furnished: as a result of a medical emergency; because the recipient's health would have been endangered if he or she had been required to travel to the state; because the care, services or supplies were more readily available in

the other state; or because it is the general practice for persons residing in the locality wherein the recipient resides to use medical providers in the other state;

(e) drugs, procedures and supplies for the treatment of erectile dysfunction when provided to, or prescribed for use by, a person who is required to register as a sex offender pursuant to article six-C of the correction law, provided that any denial of coverage pursuant to this paragraph shall provide the patient with the means of obtaining additional information concerning both the denial and the means of challenging such denial; or

(f) drugs for the treatment of sexual or erectile dysfunction, unless such drugs are used to treat a condition, other than sexual or erectile dysfunction, for which the drugs have been approved by the federal food and drug administration.

(g) for eligible persons who are also beneficiaries under part D of title XVIII of the federal social security act, drugs which are denominated as "covered part D drugs" under section 1860D-2(e) of such act.

(h) opioids prescribed in violation of the treatment plan standards of subdivision eight of section thirty-three hundred thirty-one of the public health law or treatment plan standards as otherwise required by the commissioner.

5. (a) Medical assistance shall include surgical benefits for emergency or urgent surgery for the alleviation of severe pain, for immediate diagnosis or treatment of conditions which threaten disability or death if not promptly diagnosed or treated.

(b) Medical assistance shall include surgical benefits for certain surgical procedures which meet standards for surgical intervention, as established by the state commissioner of health on the basis of medically indicated risk factors, and medically necessary surgery where delay in surgical intervention would substantially increase the medical risk associated with such surgical intervention.

(c) Medical assistance shall include surgical benefits for other deferrable surgical procedures specified by the state commissioner of health, based on the likelihood that deferral of such procedures for six months or more may jeopardize life or essential function, or cause

severe pain; provided, however, such deferrable surgical procedures shall be included in the case of in-patient surgery only when a second written opinion is obtained from a physician, or as otherwise prescribed, in accordance with regulations established by the state commissioner of health, that such surgery should not be deferred.

(d) Medical assistance shall include a maximum of one patient day of pre-operative hospital care for surgery authorized by paragraphs (b) or (c) of this subdivision; provided, however, that with respect to specific surgical procedures which the state commissioner of health has identified as requiring more than one patient day of pre-operative care, medical assistance shall include such longer maximum period of pre-operative care as such commissioner has identified as necessary.

(e) Medical assistance shall not include any in-patient surgical procedures or any care, services or supplies related to such surgery other than those authorized by this subdivision.

6. Any inconsistent provision of law notwithstanding, medical assistance shall also include payment for medical care, services or supplies furnished to eligible pregnant persons pursuant to section three hundred sixty-six and subdivision five of section three hundred sixty-four-i of this title, to the extent that and for so long as federal financial participation is available therefor; provided, however, that nothing in this section shall be deemed to affect payment for such medical care, services or supplies if federal financial participation is not available for such care, services and supplies solely by reason of the immigration status of the otherwise eligible pregnant person.

7. Medical assistance shall also include disproportionate share payments to general hospitals under the public health law.

8. When a non-governmental entity is authorized by the department pursuant to contract or subcontract to make prior authorization or prior approval determinations that may be required for any item of medical assistance, a recipient may challenge any action taken or failure to act in connection with a prior authorization or prior approval determination as if such determination were made by a government entity, and shall be

entitled to the same medical assistance benefits and standards and to the same notice and procedural due process rights, including a right to a fair hearing and aid continuing pursuant to section twenty-two of this chapter, as if the prior authorization or prior approval determination were made by a government entity, without regard to expiration of the prior service authorization.

9. (a) Notwithstanding any inconsistent provision of law, any utilization controls on occupational therapy or physical therapy, including but not limited to, prior approval of services, utilization thresholds or other limitations imposed on such therapy services in relation to a chronic condition in clinics certified under article twenty-eight of the public health law or article sixteen of the mental hygiene law shall be: (i) developed by the department of health in concurrence with the office for people with developmental disabilities; and (ii) in accord with nationally recognized professional standards. In the event that nationally recognized professional standards do not exist, such thresholds shall be based upon the reasonably recognized professional standards of those with a specific expertise in treating individuals served by clinics certified under article twenty-eight of the public health law or article sixteen of the mental hygiene law.

(b) Prior approval by the department of health of a physical therapy evaluation or an occupational therapy evaluation by a qualified practitioner practicing within the scope of such practitioner's licensure shall not be required. The department may require prior approval for treatment as recommended by such an evaluation. In the event that prior approval is required, and the department fails to make a determination within eight days of presentation of a treatment request for physical or occupational therapy services, the department shall automatically approve four therapy visits. In the case of any denial of a prior approval request for physical therapy or occupational therapy, the department shall provide a reasonable opportunity for the qualified practitioner to provide his or her assessment of the beneficiary's physical and functional status as documented in a treatment plan with reasonable and obtainable goals. If, upon completion of such four therapy visits, the department has not yet rendered a determination on the request for physical or occupational therapy services, the

department shall automatically approve an additional four therapy visits. Subsequent automatic approvals shall be issued in the same manner until such time as the department issues a determination, but in no event shall such approvals exceed the number of services or the period of time recommended by the evaluation. If the qualified practitioner provides documentation that is in accord with reasonably recognized professional standards, the recommended treatment plan shall be final, and the prior approval request shall be approved.

10. The department of health shall establish or procure the services of an independent assessor or assessors no later than October 1, 2022, in a manner and schedule as determined by the commissioner of health, to take over from local departments of social services, Medicaid Managed Care providers, and Medicaid managed long term care plans performance of assessments and reassessments required for determining individuals' needs for personal care services, including as provided through the consumer directed personal assistance program, and other services or programs available pursuant to the state's medical assistance program as determined by such commissioner for the purpose of improving efficiency, quality, and reliability in assessment and to determine individuals' eligibility for Medicaid managed long term care plans. Notwithstanding the provisions of section one hundred sixty-three of the state finance law, or sections one hundred forty-two and one hundred forty-three of the economic development law, or any contrary provision of law, contracts may be entered or the commissioner may amend and extend the terms of a contract awarded prior to the effective date and entered into to conduct enrollment broker and conflict-free evaluation services for the Medicaid program, if such contract or contract amendment is for the purpose of procuring such assessment services from an independent assessor. Contracts entered into, amended, or extended pursuant to this subdivision shall not remain in force beyond September 30, 2028.

§ 365-b. Local medical plans: professional directors. 1. A local social services medical plan shall be developed and maintained by each social services district under the guidance or direction of a professional director. Such plan shall conform to the regulations of the

department and shall be submitted to the department and the state department of health for review, certification and approval pursuant to the regulations of the department and this title.

2. The commissioner of social services of each social services district shall appoint a person, possessing the qualifications established by the public health and health planning council and promulgated by the department pursuant to section three hundred sixty-four of this title, to serve on a full or part-time basis. Each professional director shall serve under the general direction of the commissioner of social services and shall have the responsibility for supervising the program of medical assistance for needy persons in his social services district, pursuant to the regulations of the department. The state commissioner of health may authorize two or more social services districts to appoint the same person to serve as professional director in each of such districts.

3. In addition to any other duty or responsibility which may be assigned or delegated pursuant to law or regulation, each professional director shall be responsible for monitoring the professional activities, directly related to the program, of providers practicing in his social services district, and shall take all steps required or authorized by law or regulation to ensure that such activities are in compliance with the provisions of this chapter, the public health law and regulations promulgated thereunder, and do not violate the provisions of section sixty-five hundred nine of the education law or regulations promulgated pursuant thereto.

4. For purposes of this section "provider" shall mean any person receiving payment under this title.

§ 365-c. Medical advisory committee. 1. A medical advisory committee is hereby established to consist of twenty members who shall be appointed by the governor, by and with the advice and consent of the senate, for the following terms: seven shall be appointed for a term to expire on May thirty-first, nineteen hundred seventy-four: seven shall

be appointed for a term to expire on May thirty-first, nineteen hundred seventy-five: and six shall be appointed for a term to expire on May thirty-first, nineteen hundred seventy-six. Thereafter members appointed upon expiration of a term of office shall be appointed for a term of three years. Vacancies caused by death, resignation or refusal to act or by removal from the state shall be filled for the unexpired term only. At least seven members of such committee shall be duly licensed physicians. The governor shall designate a chairman from among the members of the medical advisory committee, to serve as such at the pleasure of the governor. In appointing the members of the medical advisory committee, the governor shall give consideration to professional qualifications and experience and to achieving representation of the professions of medicine, osteopathy, podiatry, mental health, social work, dentistry, optometry, chiropractic, physical therapy, pharmacy, nursing, hospital and health administration and education for the health professions, of public and private agencies in the field of medical assistance, and of recipients and consumers of medical assistance for needy persons.

2. The medical advisory committee shall advise the commissioner with respect to health and medical care services provided pursuant to this title.

3. The medical advisory committee shall meet at least once a year. Special meetings may be called by the chairman, and shall be called by him at the request of the governor or the commissioner.

4. No member of the medical advisory committee shall be disqualified from holding any other public office or employment, nor shall he forfeit any such office or employment by reason of his employment hereunder, notwithstanding the provisions of any general, special or local law, ordinance or charter.

5. The members of the medical advisory committee shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

§ 365-d. Medicaid evidence based benefit review advisory committee. 1.

The department shall convene a Medicaid evidence based benefit review advisory committee. The committee shall provide advice and make recommendations regarding coverage of health technology or service for purposes of the medical assistance program. The commissioner shall consult such committee prior to any determination made regarding the coverage status of a particular item, health technology or service based on procedures established in subdivision five of this section under the medical assistance program. For purposes of this section, "health technology" means medical devices and surgical procedures used in the prevention, diagnosis and treatment of disease and other medical conditions. For purposes of this section "services" means any medical or behavioral health procedure.

2. (a) The membership of such committee shall, at a minimum, include:

(i) at least three persons licensed and actively engaged in the practice of medicine in this state;

(ii) one person licensed and actively engaged in the practice of nursing as a nurse practitioner, or in the practice of midwifery in this state;

(iii) one person with expertise in health technology assessment or evidence based medical review who is preferably a health care professional licensed under title eight of the education law;

(iv) three persons who shall be consumers or representatives of organizations with a regional or statewide constituency and who have been involved in activities related to health care consumer advocacy;

(v) one person who is a representative of a hospital organization with a regional, national or statewide constituency;

(vi) one person who is a representative of a health insurance or managed care organization with a regional, statewide or national constituency;

(vii) one person who is a health economist;

(viii) one person with health care expertise who is appointed by the temporary president of the senate;

(ix) one person with health care expertise who is appointed by the

speaker of the assembly;

(x) a member of the department who shall act as chairperson as designated by the commissioner; and

(xi) the committee may invite and consult with scientific, technical, or clinical experts with demonstrable experience or knowledge of the technology or medical specialty area under review.

3. The department shall provide video or audio access to all meetings of such committee through the department's website.

4. The members of the committee shall receive no compensation for their services but shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties unless expressly stated otherwise in this section, members shall be appointed by the commissioner. Members shall serve three year terms, and may be reappointed for subsequent terms. Committee members shall be deemed to be employees of the department for purposes of section seventeen of the public officers law, and shall not participate in any matter before the committee for which a conflict of interest exists.

5. The committee shall consider any matter regarding material changes in the coverage status of a particular item, health technology or service, and any matter relative to new health technology assessment or medical evidence review for which the department determines a sufficient body of evidence exists to warrant committee deliberation. The commissioner shall provide members of the committee with any evidence or information related to the health technology or medical service assessment including but not limited to, information submitted by members of the public. The department shall report to the committee programmatic changes to benefits that do not rise to the level of a material change, as well as determinations of when sufficient medical evidence exists to warrant committee deliberations. The commissioner shall provide forty-five days public notice on the department's website prior to any meeting of the committee to develop recommendations concerning health technology or medical service coverage determinations. Such notice shall include a description of the proposed health technology or service to be reviewed, the conditions or diseases

impacted by the health technology or service, the proposals to be considered by the committee, and the systematic evidence-based assessment prepared in accordance with this subdivision. The committee shall allow interested parties a reasonable opportunity to make an oral presentation to the committee related to the health technology or service to be reviewed and to submit written information. The committee shall consider any information provided by any interested party, including, but not limited to, health care providers, health care facilities, patients, consumers and manufacturers. For all health technologies or services selected for review, the department shall conduct or commission a systematic evidence-based assessment of the health technology's or service's safety and clinical efficacy. The assessment shall use established systematic review elements, study quality assessment, and data synthesis. Upon completion, the systematic, evidence-based assessment shall be made available to the public.

6. The commissioner shall provide notice of any coverage recommendations developed by the committee by making such information available on the department's website. Such public notice shall include: a summary of the deliberations of the committee; a summary of the positions of those making public comments at meetings of the committee and any safety and health outcomes data submitted by any interested party; the response of the committee to those comments, if any; the clinical evidence upon which the committee bases its recommendations; and the findings and recommendations of the committee including a final evidence-based systematic assessment.

7. The commissioner shall provide public notice on the department's website of the committee's recommendation and the department's final determination, including: the nature of the determination; an analysis of the impact of the department's determination on the state Medicaid plan populations and providers; and the projected fiscal impact to the state Medicaid program.

8. The recommendations of the committee, made pursuant to this section, shall be based on a review of the evidence presented to the committee, including the clinical effectiveness, patient outcomes,

impact on at risk and underserved populations, and safety. The committee shall review previous recommendations of the committee as new evidence becomes available and permit oral presentations and the submission of new evidence at any committee meeting. Such review shall occur pursuant to the procedure established in subdivisions five and six of this section. The department may alter or revoke the final determination after such review pursuant to the procedure established in subdivision seven of this section.

9. The department shall provide administrative support to the committee.

§ 365-e. Optional or continued membership in entities offering comprehensive health services plans. 1. In accordance with applicable federal requirements and subject to the approval of the commissioner and the director of the budget, a district shall offer to persons eligible for medical assistance the option of membership in any health maintenance organization or other entity which is certified under article forty-four of the public health law or licensed pursuant to article nine-C of the insurance law or otherwise authorized by law, and which offers comprehensive health services plans to persons residing within the social services district unless granted a waiver by the commissioner on the grounds that the organization or entity is not geographically accessible so as to provide medical assistance to eligible recipients who reside within the district or that the per recipient capitation rate is above the expected average per recipient fee-for-service cost within the local district or that the health maintenance organization or other entity refuses to enter into a contract with the district.

2. Notwithstanding any inconsistent provision of law, persons who, prior to becoming eligible for medical assistance, are enrolled in a health maintenance organization or other entity offering a comprehensive health services plan shall be offered the option of continuing that enrollment.

3. The commissioner shall offer to social services districts such technical assistance as may be appropriate to assist in the development of contracts between the districts and such entities.

§ 365-f. Consumer directed personal assistance program. 1. Purpose and intent. The consumer directed personal assistance program is intended to permit chronically ill and/or physically disabled individuals receiving home care services under the medical assistance program greater flexibility and freedom of choice in obtaining such services. The department shall regularly monitor district participation in the program by reviewing the implementation plans submitted pursuant to this section. The department shall provide guidance to the districts to improve compliance with implementation plans and promote consistency among counties regarding approved service levels based on the assessments required by this section. In addition, the department shall provide technical assistance and such other assistance as may be necessary to assist such districts in assuring access to the program for eligible individuals.

2. Eligibility. All eligible individuals receiving home care shall have the opportunity to apply for participation in the program no less than annually. Each social services district shall file an implementation plan with the commissioner of the department of health, which shall be updated annually. Such updates shall be submitted no later than November thirtieth of each year. Beginning on June thirtieth, two thousand nine, the plans and updates submitted by districts shall require the approval of the department. Implementation plans shall include district enrollment targets, describe methods for the provision of notice and assistance to interested individuals eligible for enrollment in the program, and shall contain such other information as shall be required by the department. An "eligible individual", for purposes of this section is a person who:

(a) is eligible for long term care and services provided by a certified home health agency, long term home health care program or AIDS home care program authorized pursuant to article thirty-six of the public health law, or is eligible for personal care services provided

pursuant to this article, and who with the provision of such services is capable of safely remaining in the community in accordance with the standards set forth in *Olmstead v. LC* by Zimring, 527 US 581 (1999) and consider whether an individual is capable of safely remaining in the community;

(b) is eligible for medical assistance;

(c) has been determined by the social services district, pursuant to an assessment of the person's appropriateness for the program, conducted with an appropriate long term home health care program, a certified home health agency, or an AIDS home care program or pursuant to the personal care program, as being in need of home care services or private duty nursing and as needing at least limited assistance with physical maneuvering with more than two activities of daily living, or for persons with a dementia or Alzheimer's diagnosis, as needing at least supervision with more than one activity of daily living, provided that the provisions related to activities of daily living in this paragraph shall only apply to persons who initially seek eligibility for the program on or after October first, two thousand twenty, and who is able and willing or has a designated representative, including a legal guardian able and willing to make informed choices, or a designated relative or other adult who is able and willing to assist in making informed choices, as to the type and quality of services, including but not limited to such services as nursing care, personal care, transportation and respite services; and

(d) meets such other criteria, as may be established by the commissioner, which are necessary to effectively implement the objectives of this section.

3. Division of responsibilities. Eligible individuals who elect to participate in the program assume the responsibility for services under such program as mutually agreed to by the eligible individual and provider and as documented in the eligible individual's record, including, but not limited to, recruiting, hiring and supervising their personal assistants. For the purposes of this section, personal assistant shall mean an adult who has obtained an individual unique identifier from the state by or before a date determined by the commissioner of health in consultation with the Medicaid inspector

general, and provides services under this section to the eligible individual under the eligible individual's instruction, supervision and direction or under the instruction, supervision and direction of the eligible individual's designated representative, provided that a person legally responsible for an eligible individual's care and support, an eligible individual's spouse or designated representative may not be the personal assistant for the eligible individual; however, a personal assistant may include any other adult relative of the eligible individual, provided, however, that the program determines that the services provided by such relative are consistent with an individual's plan of care and that the aggregate cost for such services does not exceed the aggregate costs for equivalent services provided by a non-relative personal assistant. Any personal information submitted to obtain such unique identifier shall be maintained as confidential pursuant to article six-A of the public officers law ("New York state privacy protection law"). Such individuals shall be assisted as appropriate with service coverage, supervision, advocacy and management. Providers shall not be liable for fulfillment of responsibilities agreed to be undertaken by the eligible individual. This subdivision, however, shall not diminish the participating provider's liability for failure to exercise reasonable care in properly carrying out its responsibilities under this program, which shall include monitoring such individual's continuing ability to fulfill those responsibilities documented in his or her records. Failure of the individual to carry out his or her agreed to responsibilities may be considered in determining such individual's continued appropriateness for the program.

4-a. Fiscal intermediary services. (a) For the purposes of this section:

(i) "Statewide fiscal intermediary" means an entity that provides fiscal intermediary services and has a contract for providing such services with the department of health and is selected through the procurement process described in paragraph (b) of this subdivision.

(ii) Fiscal intermediary services shall include the following services, performed on behalf of the consumer to facilitate the consumer's role as the employer:

(A) wage and benefit processing for consumer directed personal

assistants;

(B) processing all income tax and other required wage withholdings;

(C) complying with workers' compensation, disability and unemployment requirements;

(D) maintaining personnel records for each consumer directed personal assistant, including time records and other documentation needed for wages and benefit processing and a copy of the medical documentation required pursuant to regulations established by the commissioner;

(E) ensuring that the health status of each consumer directed personal assistant is assessed prior to service delivery pursuant to regulations issued by the commissioner;

(F) maintaining records of service authorizations or reauthorizations;

(G) monitoring the consumer's or, if applicable, the designated representative's continuing ability to fulfill the consumer's responsibilities under the program and promptly notifying the authorizing entity of any circumstance that may affect the consumer's or, if applicable, the designated representative's ability to fulfill such responsibilities;

(H) complying with regulations established by the commissioner specifying the responsibilities of fiscal intermediaries providing services under this title;

(I) entering into a department approved memorandum of understanding with the consumer that describes the parties' responsibilities under this program; and

(J) other related responsibilities which may include, as determined by the commissioner, assisting consumers to perform the consumers' responsibilities under this section and department regulations in a manner that does not infringe upon the consumer's responsibilities and self-direction.

(ii-a) The commissioner shall require any managed care plans, managed long-term care plans, local social service districts, and other appropriate long-term service programs offering consumer directed personal assistance services to contract with the statewide fiscal intermediary set forth in subparagraph (i) of this paragraph to provide all fiscal intermediary services to consumers.

(ii-b) The statewide fiscal intermediary shall subcontract to facilitate the delivery of fiscal intermediary services to an entity

that is a service center for independent living under section one thousand one hundred twenty-one of the education law that has been providing fiscal intermediary services since January first, two thousand twenty-four or earlier. The statewide fiscal intermediary shall further subcontract to facilitate the delivery of fiscal intermediary services with at least one entity per rate setting region that has a proven record of delivering services to individuals with disabilities and the senior population, and has been providing fiscal intermediary services since January first, two thousand twelve; provided that such subcontractor shall be required to provide any delegated fiscal intermediary services with cultural and linguistic competency specific to the population of consumers and those of the available workforce, and shall comply with the requirements for registration as a fiscal intermediary set forth in subdivision four-a-one of this section. For purposes of this section, "delegated fiscal intermediary services" are defined as fiscal intermediary services as set forth in subparagraph (ii) of paragraph (a) of this subdivision that the statewide fiscal intermediary includes in a subcontract and which shall include services designed to meet the needs of consumers of the program, which may include assisting consumers with navigation of the program by providing individual consumer assistance and support as needed, consumer peer support, and education and training to consumers on their duties under the program.

(ii-c) The statewide fiscal intermediary shall be responsible for payment to subcontractors for delegated fiscal intermediary services. The payment shall not require a certification by the commissioner if payments are reasonably related to the costs of efficient delivery of such services.

(iii) Fiscal intermediaries are not responsible for, and fiscal intermediary services shall not include, fulfillment of the responsibilities of the consumer or, if applicable, the consumer's designated representative as established by the commissioner. A fiscal intermediary's responsibilities shall not include, and a fiscal intermediary shall not engage in: managing the plan of care including recruiting and hiring a sufficient number of individuals who meet the definition of consumer directed personal assistant, as such term is defined by the commissioner, to provide authorized services that are

included on the consumer's plan of care; training, supervising and scheduling each consumer directed personal assistant; terminating the consumer directed personal assistant's employment; or assuring that each consumer directed personal assistant competently and safely performs the personal care services, home health aide services and skilled nursing tasks that are included on the consumer's plan of care. A fiscal intermediary shall exercise reasonable care in properly carrying out its responsibilities under the program.

(b) Notwithstanding section one hundred sixty-three of the state finance law, section one hundred twelve of the state finance law, or section one hundred forty-two of the economic development law the commissioner shall enter into a contract under this subdivision with an eligible contractor that submits an offer for a contract, provided, however, that:

(i) the department shall post on its website:

(A) a description of the proposed statewide fiscal intermediary services to be provided pursuant to a contract in accordance with this subdivision;

(B) the criteria for selection of the statewide fiscal intermediary, which shall include at a minimum that the eligible contractor is capable of performing statewide fiscal intermediary services with demonstrated cultural and language competencies specific to the population of consumers and those of the available workforce, has experience serving individuals with disabilities, and as of April first, two thousand twenty-four is providing services as a fiscal intermediary on a statewide basis with at least one other state;

(C) the manner by which prospective contractors may seek such selection, which may include submission by electronic means;

(ii) all offers that are received from prospective contractors in a timely fashion and that meet the criteria set forth in clause (B) of subparagraph (i) of this paragraph shall be reviewed by the commissioner; and

(iii) the commissioner shall award such contract to the contractor that meets the criteria for selection and offers the best value for providing the services required pursuant to this section and the needs of consumers.

(c) (i) The commissioner shall require a fiscal intermediary to report

annually on the direct care and administrative costs of personal assistance services as accounted for by the fiscal intermediary. The department shall specify the format of such reports, determine the type and amount of information to be submitted, and require the submission of supporting documentation, provided, however, that the department shall provide no less than ninety calendar days' notice before such reports are due.

(ii) If the department determines that the cost report submitted by a provider is inaccurate or incomplete, the department shall notify the provider in writing and advise the provider of the correction or additional information that the provider must submit. The provider must submit the corrected or additional information within thirty calendar days from the date the provider receives the notice.

(iii) The department shall grant a provider an additional thirty calendar days to submit the original, corrected or additional cost report when the provider, prior to the date the report is due, submits a written request to the department for an extension and establishes to the department's satisfaction that the provider cannot submit the report by the date due for reasons beyond the provider's control.

(iv) All reports shall be certified by the owner, administrator, chief executive officer, or public official responsible for the operation of the provider. The cost report form shall include a certification form, which shall specify who must certify the report.

4-a-1. (a) Fiscal intermediary registration. Except for the statewide fiscal intermediary and its subcontractors, as of April first, two thousand twenty-five, no entity shall provide, directly or through contract, fiscal intermediary services. All subcontractors of the statewide fiscal intermediary, shall register with the department within thirty days of being selected as a subcontractor.

(b) In selecting its subcontractors, the statewide fiscal intermediary shall consider demonstrated compliance with all applicable federal and state laws and regulations, including but not limited to, marketing and labor practices, cost reporting, and electronic visit verification requirements.

4-b. Actions involving the registration of a fiscal intermediary.

(a) A fiscal intermediary's registration may be revoked, suspended, limited, or annulled by the commissioner upon thirty days' written notice to the fiscal intermediary, if the commissioner finds that the fiscal intermediary has failed to comply with the provisions of this section or regulations promulgated hereunder.

(b) The commissioner may issue orders and take other actions as necessary and appropriate to prohibit and prevent the provision of fiscal intermediary services by an unregistered entity.

(c) All orders or determinations under this subdivision shall be subject to review as provided in article seventy-eight of the civil practice law and rules.

4-c. The commissioner shall convene and chair a stakeholder workgroup pertaining to fiscal intermediary services and the needs of consumers. The workgroup shall consist of, at a minimum, representatives of service centers for independent living; statewide associations of fiscal intermediaries; representatives of managed care entities under article forty-four of the public health law and local social service districts; consumers; and representatives of advocacy groups representing consumers of services under this section. The workgroup shall be established no later than May fifteenth, two thousand nineteen. The workgroup shall identify and develop best practices pertaining to the delivery of fiscal intermediary services; inform the criteria for use by the department for the selection of entities under subdivision four-a of this section; identify whether services differ for certain consumers and under what circumstances; inform criteria in relation to the development of quality reporting requirements; and work with the department to develop transition plans for consumers that may need to transition to another fiscal intermediary.

4-d. Fiscal intermediaries ceasing operation. (a) Where a fiscal intermediary is ceasing operation or will no longer serve the consumer's area, the fiscal intermediary shall:

(i) deliver written notice forty-five calendar days in advance to the affected consumers, consumer representatives, personal assistants, the department, and any local social services districts or managed care plans with which the fiscal intermediary contracts. Within five business

days of receipt of the notice, the local social services district or managed care plan shall acknowledge the notice and provide the affected consumers with a list of other fiscal intermediaries operating in the same county or managed care plan network as appropriate;

(ii) not take any action that would prevent a personal assistant from moving to a new fiscal intermediary of the consumer's choice, nor require the consumer or the personal assistant to switch to a personal care or home health care program not under this section; and

(iii) upon request and consent, promptly transfer all records relating to the individual's health and care authorizations, and personnel documents to the fiscal intermediary or personal care or home health care provider chosen by the consumer and assume all liability for omissions or errors in such records.

(b) Where a consumer is electing to transfer his or her services to a new fiscal intermediary or a personal care or home health care provider by the consumer's independent choice, the fiscal intermediary being discontinued shall comply with subparagraphs (ii) and (iii) of paragraph (a) of this subdivision.

(c) Where a fiscal intermediary is suspending or ceasing operation pursuant to an order under subdivision four-b of this section, or has failed to submit an offer for a contract, or has been denied a contract under this section, all the provisions of this subdivision shall apply except subparagraph (i) of paragraph (a) of this subdivision, notice of which to all parties shall be provided by the department as appropriate.

(e) The local social services district or managed care plan, as appropriate, shall supervise the transition of services and transfer of records and maintain provision of services by the personal assistant(s) chosen by the individual.

(f) Any transfer under this subdivision shall not diminish any of an individual's rights relating to continuity of care, utilization review or fair hearing appeals and aid continuing.

5. Waivers, regulation and effectiveness.

(a) The commissioner may, subject to the approval of the director of the budget, file for such federal waivers as may be needed for the implementation of the program.

(b) Notwithstanding any other provision of law, the commissioner is

authorized to waive any provision of section three hundred sixty-seven-b of this title related to payment and may promulgate regulations necessary to carry out the objectives of the program including minimum safety, and health and immunization criteria and training requirements for personal assistants, and which describe the responsibilities of the eligible individuals in arranging and paying for services and the protections assured such individuals if they are unable or no longer desire to continue in the program, the fiscal intermediary registration process, standards, and time frames, and those regulations necessary to ensure adequate access to services.

6. Notwithstanding any inconsistent provision of this section or any other contrary provision of law, managed care programs established pursuant to section three hundred sixty-four-j of this title and managed long term care plans and other care coordination models established pursuant to section four thousand four hundred three-f of the public health law shall offer consumer directed personal assistance programs to enrollees.

7. This section shall be effective if, to the extent that, and as long as, federal financial participation is available for expenditures incurred under this section.

8. Subject to the availability of federal financial participation, the provisions of this section governing consumer directed personal assistance services shall also apply to such services when offered under the home and community-based attendant services and supports state plan option (Community First Choice) pursuant to 42 U.S.C. § 1396n(k).

9. Notwithstanding any contrary provision of law and subject to the availability of federal financial participation, for periods on and after April first, two thousand fourteen, the commissioner is authorized to make temporary periodic lump-sum Medicaid payments to fiscal intermediaries principally engaged in providing consumer directed personal assistance services to Medicaid patients, in accordance with the following:

(a) eligible fiscal intermediaries shall include:

(i) providers undergoing closure or substantial reduction in the volume of care;

(ii) providers impacted by the closure of other health care providers;

(iii) providers subject to mergers, acquisitions, consolidations or restructuring;

(iv) providers impacted by the merger, acquisition, consolidation or restructuring of other health care providers;

(v) providers seeking to ensure that access to care is maintained or increased; or

(vi) on or after January first, two thousand fifteen, providers impacted by changes to the Fair Labor Standards Act requiring overtime pay for personal assistants working in excess of forty hours per week.

(b) providers seeking Medicaid payments under this subdivision shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by such Medicaid payments will achieve one or more of the following:

(i) protect or enhance access to care;

(ii) protect or enhance quality of care;

(iii) improve the cost effectiveness of the delivery of health care services; or

(iv) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(c)(i) Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested commencement of such Medicaid payments and shall include a proposed budget to achieve the goals of the proposal. Any Medicaid payments issued pursuant to this subdivision shall be made over a specified period of time, as determined by the commissioner, of up to three years. At the end of the specified time-frame such payments shall cease. The commissioner may establish, as a condition of receiving such Medicaid payments, benchmarks and goals to be achieved in conformity with the provider's written proposal as approved by the commissioner and may also require that the provider submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the provider's Medicaid payments prior to the end of the specified

timeframe.

(ii) The commissioner may require that applications submitted pursuant to this subdivision be submitted in response to and in accordance with a request for applications or a request for proposals issued by the commissioner.

§ 365-g. Utilization review for certain care, services and supplies.

1. The department may implement a system for utilization review, pursuant to this section, for persons eligible for benefits under this title, to evaluate the appropriateness and quality of medical assistance, and safeguard against unnecessary utilization of care and services, which shall include a post-payment review process to develop and review beneficiary utilization profiles, provider service profiles, and exceptions criteria to correct misutilization practices of beneficiaries and providers; and for referral to the office of Medicaid inspector general where suspected fraud, waste or abuse are identified in the unnecessary or inappropriate use of care, services or supplies furnished under this title.

2. The department may review utilization by provider service type, medical procedure and patient, in consultation with the state department of mental hygiene, other appropriate state agencies, and other stakeholders including provider and consumer representatives. In reviewing utilization, the department shall consider historical recipient utilization patterns, patient-specific diagnoses and burdens of illness, and the anticipated recipient needs in order to maintain good health. The system for utilization review shall not be used to determine a recipient's medical care, services or supplies under this section.

3. The utilization review established pursuant to this section shall not apply to developmental disabilities services provided in clinics certified under article twenty-eight of the public health law, or article twenty-two or article thirty-one of the mental hygiene law.

4. Utilization review established pursuant to this section shall not

apply to services, even though such services might otherwise be subject to utilization review, when provided as follows:

- (a) through a managed care program;
- (b) subject to prior approval or prior authorization;
- (c) as family planning services;
- (d) as methadone maintenance services;
- (e) on a fee-for-services basis to in-patients in general hospitals certified under article twenty-eight of the public health law or article thirty-one of the mental hygiene law and residential health care facilities, with the exception of podiatrists' services;
- (f) for hemodialysis; or
- (g) through or by referral from a preferred primary care provider designated pursuant to subdivision twelve of section twenty-eight hundred seven of the public health law.

5. The department shall consult with representatives of medical assistance providers, social services districts, voluntary organizations that represent or advocate on behalf of recipients, the managed care advisory council and other state agencies regarding the ongoing operation of a utilization review system.

6. On or before February first, nineteen hundred ninety-two, the commissioner shall submit to the governor, the temporary president of the senate and the speaker of the assembly a report detailing the implementation of the utilization threshold program and evaluating the results of establishing utilization thresholds. Such report shall include, but need not be limited to, a description of the program as implemented; the number of requests for increases in service above the threshold amounts by provider and type of service; the number of extensions granted; the number of claims that were submitted for emergency care or urgent care above the threshold level; the number of recipients referred to managed care; an estimate of the fiscal savings to the medical assistance program as a result of the program; recommendations for medical condition that may be more appropriately served through managed care programs; and the costs of implementing the program.

*** § 365-h. Provision and reimbursement of transportation costs.** 1. The local social services official and, subject to the provisions of subdivision four of this section, the commissioner of health shall have responsibility for prior authorizing transportation of eligible persons and for limiting the provision of such transportation to those recipients and circumstances where such transportation is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title.

2. In exercising this responsibility, the local social services official and, as appropriate, the commissioner of health shall:

(a) make appropriate and economical use of transportation resources available in the district in meeting the anticipated demand for transportation within the district, including, but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services; and

(b) maintain quality assurance mechanisms in order to ensure that (i) only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title is provided; (ii) no expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available to eligible persons; and (iii) transportation services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements and meet consumer satisfaction criteria approved by the commissioner of health.

3. In the event that coordination or other such cost savings measures are implemented, the commissioner shall assure compliance with applicable standards governing the safety and quality of transportation of the population served.

4. (a) The commissioner of health is authorized to assume responsibility from a local social services official for the provision

and reimbursement of transportation costs under this section. If the commissioner elects to assume such responsibility, the commissioner shall notify the local social services official in writing as to the election, the date upon which the election shall be effective and such information as to transition of responsibilities as the commissioner deems prudent. The commissioner is authorized to contract with a transportation manager or managers to manage transportation services in any local social services district, other than transportation services provided or arranged for enrollees of managed long term care plans issued certificates of authority under section forty-four hundred three-f of the public health law. Any transportation manager or managers selected by the commissioner to manage transportation services shall have proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York state within which the contractor would manage the provision of services under this section. Such a contract or contracts may include responsibility for: review, approval and processing of transportation orders; management of the appropriate level of transportation based on documented patient medical need; and development of new technologies leading to efficient transportation services. If the commissioner elects to assume such responsibility from a local social services district, the commissioner shall examine and, if appropriate, adopt quality assurance measures that may include, but are not limited to, global positioning tracking system reporting requirements and service verification mechanisms. Any and all reimbursement rates developed by transportation managers under this subdivision shall be subject to the review and approval of the commissioner.

(b)(i) Subject to federal financial participation, for periods on and after April first, two thousand twenty-one, in order to more cost-effectively provide non-emergency transportation to Medicaid beneficiaries who need access to medical care and services, the commissioner is authorized to contract with one or more transportation management brokers to manage such transportation on a statewide or regional basis, as determined by the commissioner, in accordance with the federal social security act as follows:

(A) The transportation management broker or brokers shall be selected through a competitive bidding process based on an evaluation of the

broker's experience, performance, references, resources, qualifications and costs; provided, however, that the department's selection process shall be memorialized in a procurement record as defined in section one hundred sixty-three of the state finance law;

(B) The transportation management broker or brokers shall have oversight procedures to monitor Medicaid beneficiary access and complaints and ensure that enrolled Medicaid transportation providers are licensed, qualified, competent and courteous.

(C) The transportation management broker or brokers shall be subject to regular auditing and oversight by the department in order to ensure the quality of the transportation services provided and adequacy of Medicaid beneficiary access to medical care and services.

(D) The transportation management broker or brokers shall comply with requirements related to prohibitions on referrals and conflicts of interest required by the federal social security act.

(ii) The transportation management broker or brokers may be paid a per member per month capitated fee or a combination of capitation and fixed cost reimbursement and the contract shall include, but not be limited to, responsibility for:

(A) establishing a network of high-quality Medicaid enrolled providers; provided, however, that in developing such network the transportation management broker shall evaluate the qualifications of current Medicaid transportation providers on a priority basis for participation in its network, and leverage reputable transportation providers with a proven record of serving Medicaid beneficiaries with high-quality services;

(B) continuing outreach to Medicaid enrolled providers to assess and resolve service quality issues;

(C) developing mandatory corrective actions for any Medicaid enrolled provider that falls under quality performance standards;

(D) establishing a prior approval process which shall include verifying Medicaid eligibility and reviewing, approving and processing transportation orders;

(E) managing the appropriate level of transportation based on documented patient medical need to ensure that Medicaid beneficiaries are using the most medically appropriate mode of transportation, including public transportation, which shall be maximized statewide,

including in rural areas; provided that when determining the appropriate level of transportation, the transportation management broker shall ensure that patients have reasonable and timely access to medically appropriate transportation services;

(F) implementing technologies to effectuate efficient transportation services, such as GPS, to improve match to mode of transportation;

(G) establishing fees to reimburse enrolled Medicaid transportation providers;

(H) adjudicating and paying claims submitted by enrolled Medicaid transportation providers;

(I) reporting on performance encompassing all aspects of the transportation program, including but not limited to Medicaid beneficiary complaints including the length of time to make a compliant, wait times related to the receipt of services by a recipient, and tracking medical justifications to modes of transportation provided;

(J) collaborating with Medicaid beneficiaries and consumer groups to identify and resolve issues to increase consumer satisfaction;

(K) auditing cancellation data on a quarterly basis to ensure accuracy;

(L) coordinating medical benefits and transportation with Medicaid managed care organizations, including development of value based payments for transportation services; and

(M) such contracts shall include penalties for incorrect denials, unresolved complaint rates, unfulfilled trips, and any other criteria determined by the commissioner and specified in the competitive bidding process.

(iii) A transportation management broker with which the commissioner contracts shall file with the commissioner a bond issued by an insurer authorized to write fidelity and surety insurance in this state, in an amount and form to be determined by the commissioner. The purpose of the surety bond shall be to provide the sole source of recourse to providers of Medicaid transportation services, other than the transportation management broker, that cannot receive payment for services properly provided if the transportation management broker becomes insolvent. To the extent permitted by law, the surety bond shall provide that any funds that remain after such provider liabilities are satisfied shall be paid to that state.

(iv) A transportation management broker with which the commissioner contracts shall provide to Medicaid enrolled providers annually a conspicuous written disclosure that states the following: "The New York State Department of Health has contracted with this transportation management broker to arrange non-emergency transportation for Medicaid beneficiaries who need access to medical care and services and is paying the transportation management broker a per member per month capitated fee or a combination of capitation and fixed cost reimbursement. This transportation management broker is not licensed by the New York State Department of Financial Services as an insurer and is not subject to its supervision as an insurer. This transportation management broker is not protected by New York security funds and there will not be any right to recover against the department of health, department of financial services, or this state in the event of the transportation management broker's insolvency.

(v) To the extent practicable, the competitive bidding and contracting process maybe completed by April first, two thousand twenty-one; provided, however, such contract may be effective at some date after April first, two thousand twenty-one, if the process takes longer to complete.

(vi) Responsibility for transportation services provided or arranged for enrollees of managed long term care plans issued certificates of authority under section forty-four hundred three-f of the public health law, not including a program designated as a Program of All-Inclusive Care for the Elderly (PACE) as authorized by Federal Public law 1053-33, subtitle I of title IV of the Balanced Budget Act of 1997, and, at the commissioner's discretion, other plans that integrate benefits for dually eligible Medicare and Medicaid beneficiaries based on a demonstration by the plan that inclusion of transportation within the benefit package will result in cost efficiencies and quality improvement, shall be transferred to a transportation management broker that has a contract with the commissioner in accordance with this paragraph. Providers of adult day health care may elect to, but shall not be required to, use the services of the transportation management broker.

5. Notwithstanding any contrary provision of law, and subject to

federal financial participation, the commissioner of health shall make adjustments to payments under this section, for the purposes of providing increased access to Medicaid non-emergency transportation in rural communities. Up to two million dollars shall be available for such purposes.

6. (a) The commissioner of health shall require transportation providers enrolled in the Medicaid program and specified by the commissioner pursuant to regulation, to report the costs incurred in providing transportation services to Medicaid beneficiaries pursuant to this section; provided, however, this requirement shall only apply if there is no transportation management broker contract authorized in subdivision four of this section. The commissioner shall specify the frequency and format of such reports and determine the type and amount of information required to be submitted, including supporting documentation, provided that such reports shall be no more frequent than quarterly. The commissioner shall give all transportation providers no less than ninety calendar days' notice before such reports are due.

(b) If the commissioner determines that the cost report submitted by a Medicaid transportation provider is inaccurate or incomplete, the commissioner shall notify such provider in writing and advise the provider of the correction or additional information that the provider must submit. The provider shall submit the corrected or additional information within thirty calendar days from the date the provider receives the notice.

(c) The commissioner shall grant a provider an additional thirty calendar days to submit the original cost report, or corrected or additional information required pursuant to paragraph (b) of this subdivision only when the provider submits a written request to the commissioner for an extension prior to the due date and establishes to the satisfaction of the commissioner that the provider cannot submit the cost report or corrected or additional information by the due date for reasons beyond the provider's control.

* NB Repealed 16 years after the contract entered into pursuant to this section 365-h is executed

* § 365-h. Provision and reimbursement of transportation costs. 1. The local social services official shall have responsibility for prior

authorizing transportation of eligible persons and for limiting the provision of such transportation to those recipients and circumstances where such transportation is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title.

2. In exercising this responsibility, the local social services official shall:

(a) make appropriate and economical use of transportation resources available in the district in meeting the anticipated demand for transportation within the district, including, but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services; and

(b) maintain quality assurance mechanisms in order to ensure that (i) only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title is provided and (ii) no expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available to eligible persons.

3. In the event that coordination or other such cost savings measures are implemented, the commissioner shall assure compliance with applicable standards governing the safety and quality of transportation of the population served.

* NB Effective 16 years after the contract entered into pursuant to this section 365-h has been executed

§ 365-j. Advisory opinions. 1. General. (a) Definition and nature of advisory opinions. An advisory opinion is a written statement, issued pursuant to the provisions of this chapter, by the commissioner of the department of health or his or her specifically authorized designee or designees setting forth the applicability to a specified set of facts of pertinent statutory and regulatory provisions relating to the provision of medical items or services pursuant to the medical assistance program

administered by the department of health as the single state agency responsible for the administration of the program. Advisory opinions are issued at the request of any provider enrolled in the medical assistance program, and are binding upon the commissioner with respect to that provider only.

(b) Areas in which advisory opinions may be requested. An advisory opinion may be sought with respect to a substantive question, or a procedural matter. Advisory opinions may be requested with respect to questions arising prior to an audit or investigation with respect to questions relating to a provider's claim for payment or reimbursement. Advisory opinions may also be utilized for purposes of service planning. Thus, they may be requested with respect to a hypothetical or projected future set of facts.

(c) An advisory opinion will not be issued where the petition for an advisory opinion relates to a pending question raised by the provider in an ongoing or initiated investigation conducted by the Medicaid inspector general, deputy attorney general for the Medicaid fraud unit, or any other criminal investigation or any civil or criminal proceeding, or where the provider has received any written notice of the commissioner or the Medicaid inspector general which advises a provider of an imminent investigation, audit, pended or otherwise suspended claim, or withhold of payment or reimbursement.

(d) Nothing in this section shall be construed as superseding any federal rule, law, requirement or guidance.

(e) The commissioner shall promulgate rules and regulations establishing the time period for issuance of such advisory opinion and the criteria for determining the eligibility of a request for departmental response.

2. Effect of advisory opinions. (a) An advisory opinion represents an expression of the views of the commissioner of health as to the application of law, regulations and other precedential material to the set of facts specified in the petition for advisory opinion. An advisory opinion shall apply only with respect to the provider to whom the advisory opinion is rendered.

(b) A previously issued advisory opinion found by the commissioner to be in error may be modified or revoked, provided, however, that a

subsequent modification by such commissioner of such an advisory opinion shall operate prospectively. The department shall promptly notify the provider of modification or revocation of an advisory opinion.

(c) All advisory opinions shall include the following notice: "This advisory opinion is limited to the person or persons who requested the opinion and it pertains only to the facts and circumstances presented in the petition."

(d) All advisory opinions shall cite the pertinent law and regulation upon which the advisory opinion is based.

(e) All advisory opinions and all modifications and revocations of a previously issued advisory opinion shall be deemed a public record.

§ 365-k. Provision of prenatal care services. 1. (a) The commissioner shall establish standards and guidelines for the provision of prenatal care services under the medical assistance program. In establishing such standards and guidelines, the commissioner shall consider generally accepted standards of professional practice, including, but not limited to, standards issued by the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics, and shall consult with prenatal care providers and other interested parties.

(b) The standards and guidelines established under this section for providing non-invasive prenatal testing shall not limit availability and coverage for a test based on the age of the pregnant patient, unless the limit is explicitly called for by the generally accepted standards of professional practice or is otherwise recommended by safety communications or guidance issued by the United States food and drug administration, the centers for Medicare and medicaid services, or the United States department of health and human services.

2. For purposes of this title, "prenatal care provider" means a medical care facility or public or private not-for-profit agency or organization, physician, licensed nurse practitioner, or licensed midwife practicing on an individual or group basis that provides prenatal care or managed care plan that contracts with prenatal providers.

§ 365-1. Health homes. 1. Notwithstanding any law, rule or regulation to the contrary, the commissioner of health is authorized, in consultation with the commissioners of the office of mental health, office of alcoholism and substance abuse services, and office for people with developmental disabilities, to (a) establish, in accordance with applicable federal law and regulations, standards for the provision of health home services to Medicaid enrollees with chronic conditions, (b) establish payment methodologies for health home services based on factors including but not limited to the complexity of the conditions providers will be managing, the anticipated amount of patient contact needed to manage such conditions, and the health care cost savings realized by provision of health home services, (c) establish the criteria under which a Medicaid enrollee will be designated as being an eligible individual with chronic conditions for purposes of this program, (d) assign any Medicaid enrollee designated as an eligible individual with chronic conditions to a provider of health home services.

2. In addition to payments made for health home services pursuant to subdivision one of this section, the commissioner is authorized to pay additional amounts to providers of health home services that meet process or outcome standards specified by the commissioner. Such additional amounts may be paid with state funds only if federal financial participation for such payments is unavailable.

2-a. Up to fifteen million dollars in state funding may be used to fund health home infrastructure development. Such funds shall be used to develop enhanced systems to support Health Home operations including assignments, workflow, and transmission of data. Funding will also be disbursed pursuant to a formula established by the commissioner to be designated health homes. Such formula may consider prior access to similar funding opportunities, geographic and demographic factors, including the population served, and prevalence of qualifying conditions, connectivity to providers, and other criteria as established by the commissioner.

2-b. The commissioner is authorized to make lump sum payments or adjust rates of payment to providers up to a gross amount of five million dollars, to establish coordination between the health homes and the criminal justice system and for the integration of information of health homes with state and local correctional facilities, to the extent permitted by law. Such rate adjustments may be made to health homes participating in a criminal justice pilot program with the purpose of enrolling incarcerated individuals with serious mental illness, two or more chronic conditions, including substance abuse disorders, or HIV/AIDS, into such health home. Health homes receiving funds under this subdivision shall be required to document and demonstrate the effective use of funds distributed herein.

2-c. The commissioner is authorized to make grants up to a gross amount of one million dollars for certified application counselors and assistors to facilitate the enrollment of persons in high risk populations, including but not limited to persons with mental health and/or substance abuse conditions that have been recently discharged or are pending release from state and local correctional facilities. Funds allocated for certified application counselors and assistors shall be expended through a request for proposal process.

2-d. The commissioner shall establish reasonable targets for health home participation by enrollees of special needs managed care plans designated pursuant to subdivision four of section three hundred sixty-five-m of this title and by high-risk enrollees of other Medicaid managed care plans operating pursuant to section three hundred sixty-four-j of this title, and shall encourage both the managed care providers and the health homes to work collaboratively with each other to achieve such targets. The commissioner may assess penalties under this subdivision in instances of failure to meet the participation targets established pursuant to this subdivision, where the department has determined that such failure reflected the absence of a good faith and reasonable effort to achieve the participation targets, except that managed care providers shall not be penalized for the failure of a health home to work collaboratively toward meeting the participation targets and a health home shall not be penalized for the failure of a

managed care provider to work collaboratively toward meeting the participation targets.

3. Until such time as the commissioner obtains necessary waivers and/or approvals of the federal social security act, Medicaid enrollees assigned to providers of health home services will be allowed to opt out of such services. In addition, upon enrollment, an enrollee shall be offered an option of at least two providers of health home services, to the extent practicable.

4. Payments authorized pursuant to this section will be made with state funds only, to the extent that such funds are appropriated therefore, until such time as federal financial participation in the costs of such services is available.

5. The commissioner is authorized to submit amendments to the state plan for medical assistance and/or submit one or more applications for waivers of the federal social security act, to obtain federal financial participation in the costs of health home services provided pursuant to this section, and as provided in subdivision three of this section.

6. Notwithstanding any limitations imposed by section three hundred sixty-four-1 of this title on entities participating in demonstration projects established pursuant to such section, the commissioner is authorized to allow such entities which meet the requirements of this section to provide health home services.

7. Notwithstanding any law, rule, or regulation to the contrary, the commissioners of the department of health, the office of mental health, the office for people with developmental disabilities, and the office of alcoholism and substance abuse services are authorized to jointly establish a single set of operating and reporting requirements and a single set of construction and survey requirements for entities that:

(a) can demonstrate experience in the delivery of health, and mental health and/or alcohol and substance abuse services and/or services to persons with developmental disabilities, and the capacity to offer integrated delivery of such services in each location approved by the

commissioner; and

(b) meet the standards established pursuant to subdivision one of this section for providing and receiving payment for health home services; provided, however, that an entity meeting the standards established pursuant to subdivision one of this section shall not be required to be an integrated service provider pursuant to this subdivision.

In establishing a single set of operating and reporting requirements and a single set of construction and survey requirements for entities described in this subdivision, the commissioners of the department of health, the office of mental health, the office for people with developmental disabilities, and the office of alcoholism and substance abuse services are authorized to waive any regulatory requirements as are necessary to avoid duplication of requirements and to allow the integrated delivery of services in a rational and efficient manner.

8. (a) The commissioner of health is authorized to contract with one or more entities to assist the state in implementing the provisions of this section. Such entity or entities shall be the same entity or entities chosen to assist in the implementation of the multipayer patient centered medical home program pursuant to section twenty-nine hundred fifty-nine-a of the public health law. Responsibilities of the contractor shall include but not be limited to: developing recommendations with respect to program policy, reimbursement, system requirements, reporting requirements, evaluation protocols, and provider and patient enrollment; providing technical assistance to potential medical home and health home providers; data collection; data sharing; program evaluation, and preparation of reports.

(b) Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner of health is authorized to enter into a contract or contracts under paragraph (a) of this subdivision without a competitive bid or request for proposal process, provided, however, that:

(i) The department of health shall post on its website, for a period of no less than thirty days:

(1) A description of the proposed services to be provided pursuant to

the contract or contracts;

(2) The criteria for selection of a contractor or contractors;

(3) The period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(4) The manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(ii) All reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner of health; and

(iii) The commissioner of health shall select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section.

9. The contract entered into by the commissioner of health prior to January first, two thousand thirteen pursuant to subdivision eight of this section may be amended or modified without the need for a competitive bid or request for proposal process, and without regard to the provisions of sections one hundred twelve and one hundred sixty-three of the state finance law, section one hundred forty-two of the economic development law, or any other provision of law, excepting the responsible vendor requirements of the state finance law, including, but not limited to, sections one hundred sixty-three and one hundred thirty-nine-k of the state finance law, to allow the purchase of additional personnel and services, subject to available funding, for the limited purpose of assisting the department of health with implementing the Balancing Incentive Program, the Fully Integrated Duals Advantage Program, the Vital Access Provider Program, the Medicaid waiver amendment associated with the public hospital transformation, the addition of behavioral health services as a managed care plan benefit, the delivery system reform incentive payment plan, activities to facilitate the transition of vulnerable populations to managed care and/or any workgroups required to be established by the chapter of the laws of two thousand thirteen that added this subdivision. The department is authorized to extend such contract for a period of one year, without a competitive bid or request for proposal process, upon determination that the existing contractor is qualified to continue to

provide such services; provided, however, that the department of health shall submit a request for applications for such contract during the time period specified in this subdivision and may terminate the contract identified herein prior to expiration of the extension authorized by this subdivision.

§ 365-m. Administration and management of behavioral health services.

1. The commissioners of the office of mental health and the office of alcoholism and substance abuse services, in consultation with the commissioner of health, the impacted local governmental units and with the approval of the division of the budget, shall have responsibility for jointly designating regional entities to provide administrative and management services for the purposes of prior approving and coordinating the provision of behavioral health services, facilitating the continuity of post-hospitalization behavioral health and the integration of behavioral health services with other services available under this title, for recipients of medical assistance who are not enrolled in managed care, and for such approval, coordination, facilitating continuity and integration of behavioral health services that are not provided through managed care programs under this title for individuals regardless of whether or not such individuals are enrolled in managed care programs. Such regional entities shall also be responsible for promoting appropriate care and service utilization while safeguarding against unnecessary utilization of such care and services and assuring that payments are consistent with the efficient and economical delivery of quality care.

2. In exercising this responsibility, the commissioners of the office of mental health and the office of alcoholism and substance abuse services are authorized to contract, after consultation with the commissioner of health and the impacted local governmental units, with regional behavioral health organizations or other entities. Such contracts may include responsibility for receipt, review, and determination of prior authorization requests for behavioral health care and services under subdivision one of this section, consistent with criteria established or approved by the commissioners of mental health

and alcoholism and substance abuse services, and authorization of appropriate care and services based on documented patient medical need.

3. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law to the contrary, the commissioners of the office of mental health and the office of alcoholism and substance abuse services are authorized to enter into a contract or contracts under subdivisions one and two of this section without a competitive bid or request for proposal process, provided, however, that:

(a) the office of mental health and the office of alcoholism and substance abuse services shall post on their websites, for a period of no less than thirty days:

(i) a description of the proposed services to be provided pursuant to the contractor contracts;

(ii) the criteria for selection of a contractor or contractors;

(iii) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(b) all reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioners; and

(c) the commissioners of the office of mental health and the office of alcoholism and substance abuse services, in consultation with the commissioner of health and the impacted local governmental units, shall select such contractor or contractors that, in their discretion, have demonstrated the ability to effectively, efficiently, and economically integrate behavioral health and health services; have the requisite expertise and financial resources; have demonstrated that their directors, sponsors, members, managers, partners or operators have the requisite character, competence and standing in the community, and are best suited to serve the purposes of this section. In selecting such contractor or contractors, the commissioners shall:

(i) ensure that any such contractor or contractors have an adequate

network of providers to meet the behavioral health and health needs of enrollees, and shall review the adequacy prior to approval of any such contract or contracts, and upon contract renewal or expansion. To the extent that the network has been determined to meet standards set forth in subdivision five of section four thousand four hundred three of the public health law, such network shall be deemed adequate.

(ii) ensure that such contractor or contractors shall make level of care and coverage determinations utilizing evidence-based tools or guidelines designated to address the behavioral health needs of enrollees.

(iii) ensure sufficient access to behavioral health and health services for eligible enrollees by establishing and monitoring penetration rates of any such contractor or contractors.

(iv) establish standards to encourage the use of services, products and care recommended, ordered or prescribed by a provider to sufficiently address the behavioral health and health services needs of enrollees; and monitor the application of such standards to ensure that they sufficiently address the behavioral health and health services needs of enrollees.

4. The commissioners of the office of mental health, the office of alcoholism and substance abuse services and the department of health, shall have the responsibility for jointly designating on a regional basis, after consultation with the local social services district and local governmental unit, as such term is defined in the mental hygiene law, of a city with a population of over one million persons, and after consultation of other affected counties, a limited number of special needs managed care plans under section three hundred sixty-four-j of this title capable of managing the behavioral and physical health needs of medical assistance enrollees with significant behavioral health needs. Initial designations of such plans should be made no later than April first, two thousand fourteen, provided, however, such designations shall be contingent upon a determination by such state commissioners that the entities to be designated have the capacity and financial ability to provide services in such plans, and that the region has a sufficient population and service base to support such plans. Once designated, the commissioner of health shall make arrangements to enroll

such enrollees in such plans and to pay such plans on a capitated or other basis to manage, coordinate, and pay for behavioral and physical health medical assistance services for such enrollees. Notwithstanding any inconsistent provision of section one hundred twelve and one hundred sixty-three of the state finance law, and section one hundred forty-two of the economic development law, or any other law to the contrary, the designations of such plans, and any resulting contracts with such plans or providers are authorized to be entered into by such state commissioners without a competitive bid or request for proposal process, provided however that:

(a) the department of health, the office of mental health and the office of alcoholism and substance abuse services shall post on their websites, for a period of not less than thirty days:

(i) a description of the proposed services to be provided by the plans or systems;

(ii) the criteria for selection of a plan or system;

(iii) the period of time during which a prospective plan or system may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) the manner by which a prospective plan or system may seek such selection, which may include submission by electronic means;

(b) all reasonable and responsive submissions that are received from prospective plans or systems in timely fashion shall be reviewed by the commissioners; and

(c) the commissioners of the office of mental health and the office of alcoholism and substance abuse services, in consultation with the commissioner of health, shall select such plans or systems that, in their discretion, have demonstrated the ability to effectively, efficiently, and economically manage the behavioral and physical health needs of medical assistance enrollees with significant behavioral health needs; have the requisite expertise and financial resources; have demonstrated that their directors, sponsors, members, managers, partners or operators have the requisite character, competence and standing in the community, and are best suited to serve the purposes of this section. Oversight of such contracts with such plans, providers or provider systems shall be the joint responsibility of such state commissioners, and for contracts affecting a city with a population of

over one million persons, also with the city's local social services district and local governmental unit, as such term is defined in the mental hygiene law.

In selecting such plans or systems, the commissioners shall:

(i) ensure that any such plans or systems have an adequate network of providers to meet the behavioral health and health needs of enrollees, and shall review the adequacy prior to approval of any such plans or systems, and upon contract renewal or expansion. To the extent that the network has been determined to meet standards set forth in subdivision five of section four thousand four hundred three of the public health law, such network shall be deemed adequate.

(ii) ensure that such plans or systems shall make level of care and coverage determinations utilizing evidence-based tools or guidelines designed to address the behavioral health needs of enrollees.

(iii) ensure sufficient access to behavioral health and health services for eligible enrollees by establishing and monitoring penetration rates of any such plans or systems.

(iv) establish standards to encourage the use of services, products and care recommended, ordered or prescribed by a provider to sufficiently address the behavioral health and health services needs of enrollees; and monitor the application of such standards to ensure that they sufficiently address the behavioral health and health services needs of enrollees.

5. (a) Pursuant to appropriations within the offices of mental health or addiction services and supports, the department of health shall reinvest savings realized through the transition of populations covered by this section from the applicable Medicaid fee-for-service system to a managed care model, including savings realized through the recovery of premiums from managed care providers which represent a reduction of spending on qualifying behavioral health services against established premium targets for behavioral health services and the medical loss ratio applicable to special needs managed care plans, for the purpose of increasing investment in community based behavioral health services, including residential services certified by the office of addiction services and supports. The methodologies used to calculate the savings shall be developed by the commissioner of health and the director of the

budget in consultation with the commissioners of the office of mental health and the office of addiction services and supports. In no event shall the full annual value of the reinvestment pursuant to this subdivision exceed the value of the premiums recovered from managed care providers which represent a reduction of spending on qualifying behavioral health services. Within any fiscal year where appropriation increases are recommended for reinvestment, insofar as managed care transition savings do not occur as estimated, then spending for such reinvestment may be reduced in the next year's annual budget itemization.

(b) Beginning April first, two thousand twenty-two, the department shall post on its website information about the recovery of premiums from managed care providers which represent a reduction of spending on qualifying behavioral health services against established premium targets for behavioral health services and the medical loss ratio applicable to special needs managed care plans. Such information shall include at a minimum: (i) a copy of the department's notification to each managed care provider that seeks a recovery of such premiums; and (ii) a list of managed care providers by name that have been subject to a recovery of such premiums, specifying the amount of premium that has been recovered from each managed care provider and year. In the initial posting, the department shall include all premiums recovered to date as required by this subdivision, by named managed care provider, amount and year.

(c) The commissioner shall include information regarding the funds available for reinvestment, including how savings are calculated and how the reinvestment was utilized pursuant to this section in the annual report required under section forty-five-c of part A of chapter fifty-six of the laws of two thousand thirteen.

§ 365-n. Department of health assumption of program administration. 1. Notwithstanding the provisions of title two of article three of this chapter or of section three hundred sixty-five of this title or of any other law to the contrary, the commissioner of health (commissioner) is authorized to take actions explicitly authorized by this section that are necessary to transfer responsibility for the administration of the

medical assistance program from local social services districts to the department of health (department) by March thirty-first, two thousand eighteen.

2. For purposes of this section, the administration of the medical assistance program includes: processing applications for benefits and services available under this title and title eleven-D of this article; making determinations of initial and ongoing eligibility for such benefits and services; making coverage determinations with respect to benefits and services requiring prior authorization; notifying applicants and recipients of these determinations and of their rights and responsibilities, authorizing benefits and services for persons found eligible; exercising subrogation rights with respect to amounts received from insurance carriers or other liable third parties; imposing liens and pursuing recoveries; and any other such tasks and functions identified by the commissioner.

3. Notwithstanding sections sixty-one, sixty-three, seventy, seventy-eight, seventy-nine, eighty-one and eighty-one-a of the civil service law or any provisions to the contrary contained in any general, special, or local laws, all lawful appointees of a county performing the functions established in subdivision two of this section as of the effective date of this section or any such appointees who meet the open competitive qualifications for positions established to perform these functions will be eligible for voluntary transfer to appropriate positions, in the department, that are classified to perform such functions without further examination, qualification, or probationary period; and, upon such transfer, will have all the rights and privileges of the jurisdictional classification to which such positions are allocated in the classified service of the state.

4. Within one hundred twenty days of the effective date of this section, the department shall develop and implement a local department of social services statement of interest. The statement of interest will elicit from local departments of social services their interest in and capacity to contract with the department to perform the functions established in subdivision two of this section. To the extent

practicable and in the best interest of the medical assistance program, the department shall contract with local social services districts to perform all or a portion of the functions described in subdivision two of this section. In no event, however, shall the department, by means of such a contract, delegate its authority to exercise administrative discretion in the administration or supervision of the state plan for medical assistance submitted pursuant to section three hundred sixty-three-a of this title, or to issue policies, rules, and regulations on program matters nor may any contracted entity be given the authority to change or disapprove any administrative decision of the department, or otherwise substitute such entity's judgment for that of the department with respect to the application of policies, rules, and regulations issued by the department. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or sections one hundred forty-two and one hundred forty-three of the economic development law, or any other contrary provision of law, the commissioner is authorized to enter into a contract with local departments of social services without a competitive bid or request for proposal process.

5-a. (a) The commissioner may take necessary action to review the accuracy of determinations of initial and ongoing eligibility under the medical assistance program, and to identify and eliminate inappropriate instances of concurrent or duplicate benefits and authorizations. The commissioner is authorized to contract with one or more entities to assist the state in implementing the provisions of this subdivision.

(b) Notwithstanding the provisions of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any contrary provision of law, the commissioner is authorized to enter into a contract or contracts under paragraph (a) of this subdivision without a competitive bid or request for proposal process, provided, however, that:

(i) The department of health shall post on its website, for a period of no less than thirty days:

(1) A description of the proposed services to be provided pursuant to the contract or contracts;

(2) The criteria for selection of a contractor or contractors;

(3) The period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(4) The manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(ii) All reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner; and

(iii) The commissioner shall select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section; and

(iv) No contract entered pursuant to this paragraph shall have a term that ends later than March thirty-first, two thousand seventeen.

6. The commissioner shall submit an annual report to the governor, temporary president of the senate, speaker of the assembly, the chair of the senate health committee and the chair of the assembly health committee by December thirty-first, beginning in two thousand twelve and for each year thereafter until the year following full implementation. The initial report shall consist of modifications to the plan developed pursuant to section forty-seven-b of part B of chapter fifty-eight of the laws of two thousand ten, and shall include anticipated implementation of the revised plan, its elements, a timeline for such implementation, recommendations for legislative action, and such other matters as may be pertinent.

The report shall include a plan and timeline for the state to:

(i) assume specific functions related to the administration of the medical assistance program; (ii) coordinate the implementation of provisions of federal law with the assumption of the administration of the medical assistance program; and (iii) address the financing of the medical assistance program administration and any associated administrative cost relief to local social services districts. The report shall also indicate any function that the state intends to enter into a contract with a public and/or private entity to perform, and the date in which the state anticipates entering into any such contract. In addition, reports shall, at a minimum, indicate: (i) any progress the

department has made regarding its proposed timeline, including a summary of all functions assumed by the state during the previous year; (ii) any anticipated and/or actual delay from the proposed timeline; (iii) the reason for any such delay; and (iv) actions the department has undertaken to mitigate any such delay.

7. The commissioner shall promulgate such regulations that are necessary to carry out the provisions of this section. In addition, the commissioner shall make any amendments to the state plan for medical assistance, or develop and submit an application for any waiver or approval under the federal social security act, that are necessary and required to carry out the provisions of this section.

§ 365-o. Provision and coverage of services for living organ donors.

This section applies in the case of a living donor under section forty-three hundred seventy-one of the public health law who is enrolled in medical assistance under this title. Living donor expenses for eligible individuals under section forty-three hundred seventy-one of the public health law that are covered benefits under this title are excluded from reimbursement under the living donor support program, defined in section forty-three hundred seventy of the public health law, provided federal financial participation is available.

§ 365-p. Doula for Medicaid. 1. Definitions. (a) For the purposes of this section, "doula" means a trained person who provides continuous physical, emotional, and informational support to a pregnant person and the family of such pregnant person during or a reasonable time after pregnancy.

(b) A doula may provide services in hospitals, birthing centers, at home deliveries and other community settings.

2. New York state community doula directory. (a) The department shall establish and maintain a community doula directory for doulas on the department's internet website for the purposes of Medicaid reimbursement and promoting doula services to Medicaid recipients.

(b) The directory shall include the following information concerning doulas such as:

(i) the name of the doula who provides doula services;

(ii) the address and location of where the doula provides doula services;

(iii) the name of each Medicaid provider that employs or contracts with a doula to provide doula services to eligible Medicaid recipients;

(iv) the doula's national provider identification number, if applicable; and

(v) all documentation of criteria pursuant to subdivision three of this section.

(c) The department shall determine the method of registration and the documentation required to verify such criteria has been met.

(d) Each doula shall be responsible for completing the requirements pursuant to subdivision three of this section.

(e) The department shall not impose any fee on any doula to register for admittance into the New York state community doula directory.

(f) The community doula directory shall be publicly accessible at no cost to the doula or birthing person looking to hire a doula in their community.

3. Criteria for admittance into the New York state community doula directory. (a) Each doula seeking Medicaid reimbursement shall apply to be registered in the New York state community doula directory.

(b) A doula shall submit to the department a certified copy of such doula's certification from a doula educational organization or by demonstration of satisfactory proficiency pursuant to this subdivision, and his, her, or their full name, address, phone number, email address, and if applicable, their national provider identification number.

§ 366. Eligibility. 1. (a) Definitions. For purposes of this section:

(1) "benchmark coverage" refers to medical assistance coverage defined in subdivision one of section three hundred sixty-five-a of this title;

(2) "caretaker relative" means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care and who is one of the

following:

(i) the child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece; or

(ii) the spouse of such parent or relative, even after the marriage is terminated by death or divorce;

(3) "family size" means the number of persons counted as members of an individual's household; with respect to individuals whose medical assistance eligibility is based on modified adjusted gross income, in determining the family size of a pregnant woman, or of other individuals who have a pregnant woman in their household, the pregnant woman is counted as herself plus the number of children she is expected to deliver;

(4) "federal poverty line" means the poverty line defined and annually revised by the United States department of health and human services;

(5) "household", for purposes of determining the financial eligibility of individuals whose medical assistance eligibility is based on modified adjusted gross income, shall mean:

(i) Basic rule for taxpayers not claimed as a tax dependent. In the case of an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and, subject to clause (v) of this subparagraph, all persons whom such individual expects to claim as a tax dependent;

(ii) Basic rule for individuals claimed as a tax dependent. In the case of an individual who expects to be claimed as a tax dependent by another taxpayer for the taxable year in which an initial determination or renewal of eligibility is being made, the household is the household of the taxpayer claiming such individual as a tax dependent, except that the household must be determined in accordance with clause (iii) of this subparagraph in the case of:

(A) Individuals other than a spouse or child who expect to be claimed as a tax dependent by another taxpayer; and

(B) Individuals under nineteen years of age, or under twenty-one years of age if a full-time student, who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do

not expect to file a joint tax return; and

(C) Individuals under nineteen years of age, or under twenty-one years of age if a full-time student, who expect to be claimed as a tax dependent by a non-custodial parent. For purposes of this subclause:

(1) A court order or binding separation, divorce, or custody agreement establishing physical custody controls; or

(2) If there is no such order or agreement or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights;

(iii) Rules for individuals who neither file a tax return nor are claimed as a tax dependent. In the case of individuals who do not expect to file a Federal tax return and do not expect to be claimed as a tax dependent for the taxable year in which an initial determination or renewal of eligibility is being made, or who are described in subclauses (A), (B), or (C) of clause (ii) of this subparagraph, the household consists of the individual and, if living with the individual:

(A) The individual's spouse;

(B) The individual's children under nineteen years of age, or under twenty-one years of age if a full-time student; and

(C) In the case of an individual under nineteen years of age, or under twenty-one years of age if a full-time student, the individual's parents and the individual's siblings under nineteen years of age, or under twenty-one years of age if a full-time student;

(iv) Married couples. In the case of a married couple living together, each spouse will be included in the household of the other spouse, regardless of whether they expect to file a joint tax return under section six thousand thirteen of the internal revenue code or whether one spouse expects to be claimed as a tax dependent by the other spouse.

(v) For purposes of clause (i) of this subparagraph, if a taxpayer cannot reasonably establish that another individual is a tax dependent of the taxpayer for the tax year in which Medicaid is sought, the inclusion of such individual in the household of the taxpayer is determined in accordance with clause (iii) of this subparagraph.

(6) "MAGI" means modified adjusted gross income;

(7) "MAGI-based income" means income calculated using the same methodologies used to determine MAGI under section 36B(d)(2)(B) of the Internal Revenue Code, with the exception of lump sum payments, certain

educational scholarships, and certain American Indian and Alaska Native income, as specified by the commissioner of health consistent with federal regulation at 42 CFR 435.603 or any successor regulation;

(8) "MAGI household income" means, with respect to an individual whose medical assistance eligibility is based on modified adjusted gross income, the sum of the MAGI-based income of every person included in the individual's MAGI household, except that it shall not include the MAGI-based income of the following persons if such persons are not expected to be required to file a tax return in the taxable year in which eligibility for medical assistance is being determined:

(i) a biological, adopted, or step child who is included in the individual's MAGI household; or

(ii) a person, other than a spouse or a biological, adopted, or step child, who is expected to be claimed as a tax dependent by the individual;

(9) "standard coverage" refers to medical assistance coverage defined in subdivision two of section three hundred sixty-five-a of this title.

(b) MAGI eligibility groups. Individuals listed in this paragraph are eligible for medical assistance based on modified adjusted gross income. In determining the eligibility of an individual for the MAGI eligibility group with the highest income standard under which the individual may qualify, an amount equivalent to five percentage points of the federal poverty level for the applicable family size will be deducted from the household income.

(1) An individual is eligible for benchmark coverage if his or her MAGI household income does not exceed one hundred thirty-three percent of the federal poverty line for the applicable family size and he or she is:

(i) age nineteen or older and under age sixty-five; and

(ii) not pregnant; and

(iii) not entitled to or enrolled for benefits under parts A or B of title XVIII of the federal social security act; and

(iv) not otherwise eligible for and receiving coverage under subparagraphs two and three of this paragraph; and

(v) not a parent or other caretaker relative of a dependent child under twenty-one years of age and living with such child, unless such child is receiving benefits under this title or under title 1-A of

article twenty-five of the public health law, or otherwise is enrolled in minimum essential coverage.

(2) A pregnant person or an infant younger than one year of age is eligible for standard coverage if their MAGI household income does not exceed the MAGI-equivalent of two hundred percent of the federal poverty line for the applicable family size, which shall be calculated in accordance with guidance issued by the secretary of the United States department of health and human services.

(3) A child who is at least one year of age but younger than nineteen years of age is eligible for standard coverage if such child's MAGI household income does not exceed the MAGI-equivalent of one hundred thirty-three percent of the federal poverty line for the applicable family size, which shall be calculated in accordance with guidance issued by the Secretary of the United States department of health and human services.

(4) An individual who is a pregnant woman or is a member of a family that contains a dependent child living with a parent or other caretaker relative is eligible for standard coverage if their MAGI household income does not exceed one hundred thirty-three percent of the federal poverty line for the applicable family size, which shall be calculated in accordance with guidance issued by the Secretary of the United States department of health and human services; for purposes of this subparagraph, the term dependent child means a person who is under eighteen years of age, or is eighteen years of age and a full-time student, who is deprived of parental support or care by reason of the death, continued absence, or physical or mental incapacity of a parent, or by reason of the unemployment of the parent, as defined by the department of health.

(5) A child who is under twenty-one years of age and who was in foster care under the responsibility of the state on his or her eighteenth birthday is eligible for standard coverage; notwithstanding any provision of law to the contrary, the provisions of this subparagraph shall be effective only if and for so long as federal financial participation is available in the costs of medical assistance furnished hereunder.

(6) An individual who is not otherwise eligible for medical assistance under this section is eligible for coverage of family planning services

reimbursed by the federal government at a rate of ninety percent, and for coverage of those services identified by the commissioner of health as services generally performed as part of or as a follow-up to a service eligible for such ninety percent reimbursement, including treatment for sexually transmitted diseases, if his or her income does not exceed the MAGI-equivalent of two hundred percent of the federal poverty line for the applicable family size, which shall be calculated in accordance with guidance issued by the secretary of the United States department of health and human services; provided further that the commissioner of health is authorized to establish criteria for presumptive eligibility for services provided pursuant to this subparagraph in accordance with all applicable requirements of federal law or regulation pertaining to such eligibility.

* (7) A child who is nineteen or twenty years of age living with his or her parent will be eligible for standard coverage if the sum of the MAGI-based income of every person included in the child's MAGI household exceeds one hundred thirty-three percent, but does not exceed one hundred fifty percent, of the federal poverty line for the applicable family size.

* NB Repealed October 1, 2029

(7-a) An individual is eligible for benchmark coverage if his or her MAGI household income exceeds one hundred thirty-three percent of the federal poverty line for the applicable family size and he or she:

(i) was eligible or would have been eligible for the family health plus program without federal financial participation in the costs of medical care and services under such program; and

(ii) is not eligible to enroll in a qualified health plan offered through the state health benefit exchange established pursuant to the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

(c) Non-MAGI eligibility groups. Individuals listed in this paragraph are eligible for standard coverage. Where a financial eligibility determination must be made by the medical assistance program for individuals in these groups, such financial eligibility will be determined in accordance with subdivision two of this section.

(1) An individual receiving or eligible to receive federal

supplemental security income payments and/or additional state payments pursuant to title six of this article; any inconsistent provision of this chapter or other law notwithstanding, the department may designate the office of temporary and disability assistance as its agent to discharge its responsibility, or so much of its responsibility as is permitted by federal law, for determining eligibility for medical assistance with respect to persons who are not eligible to receive federal supplemental security income payments but who are receiving a state administered supplementary payment or mandatory minimum supplement in accordance with the provisions of subdivision one of section two hundred twelve of this article.

(2) An individual who, although not receiving public assistance or care for his or her maintenance under other provisions of this chapter, has income and resources, including available support from responsible relatives, that does not exceed the amounts set forth in paragraph (a) of subdivision two of this section, and is (i) sixty-five years of age or older, or certified blind or certified disabled or (ii) for reasons other than income or resources, is eligible for federal supplemental security income benefits and/or additional state payments.

(3) An individual who, although not receiving public assistance or care for his or her maintenance under other provisions of this chapter, has income, including available support from responsible relatives, that does not exceed the amounts set forth in paragraph (a) of subdivision two of this section, and is (i) under the age of twenty-one years, or (ii) a spouse of a cash public assistance recipient living with him or her and essential or necessary to his or her welfare and whose needs are taken into account in determining the amount of his or her cash payment, or (iii) for reasons other than income, would meet the eligibility requirements of the aid to dependent children program as it existed on the sixteenth day of July, nineteen hundred ninety-six.

(4) A child in foster care, or a child described in section four hundred fifty-four or four hundred fifty-eight-d of this chapter.

(5) A disabled individual at least sixteen years of age, but under the age of sixty-five, who: would be eligible for benefits under the supplemental security income program but for earnings in excess of the allowable limit; has net available income that does not exceed two hundred fifty percent of the applicable federal income official poverty

line, as defined and updated by the United States department of health and human services, for a one-person or two-person household, as defined by the commissioner in regulation; has household resources, as defined in paragraph (e) of subdivision two of section three hundred sixty-six-c of this title, other than retirement accounts, that do not exceed one hundred fifty percent of the income amount permitted under subparagraph seven of paragraph (a) of subdivision two of this section, for a one-person or two-person household, as defined by the commissioner in regulation; and contributes to the cost of medical assistance provided pursuant to this subparagraph in accordance with subdivision twelve of section three hundred sixty-seven-a of this title; for purposes of this subparagraph, disabled means having a medically determinable impairment of sufficient severity and duration to qualify for benefits under section 1902(a)(10)(A)(ii)(xv) of the social security act.

(6) An individual at least sixteen years of age, but under the age of sixty-five, who: is employed; ceases to be in receipt of medical assistance under subparagraph five of this paragraph because the person, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be eligible for supplemental security income program benefits or disability insurance benefits under the social security act; continues to have a severe medically determinable impairment, to be determined in accordance with applicable federal regulations; and contributes to the cost of medical assistance provided pursuant to this subparagraph in accordance with subdivision twelve of section three hundred sixty-seven-a of this title; for purposes of this subparagraph, a person is considered to be employed if the person is earning at least the applicable minimum wage under section six of the federal fair labor standards act and working at least forty hours per month; or

(7) An individual receiving treatment for breast or cervical cancer who meets the eligibility requirements of paragraph (d) of subdivision four of this section or the presumptive eligibility requirements of subdivision four of section three hundred sixty-four-i of this title.

(8) An individual receiving treatment for colon or prostate cancer who meets the eligibility requirements of paragraph (e) of subdivision four of this section or the presumptive eligibility requirements of subdivision four of section three hundred sixty-four-i of this title.

(9) An individual who:

(i) is under twenty-six years of age; and

(ii) was in foster care under the responsibility of the state on his or her eighteenth birthday; and

(iii) was in receipt of medical assistance under this title while in foster care; and

(iv) is not otherwise eligible for medical assistance under this title.

(10) A resident of a home for adults operated by a social services district, or a residential care center for adults or community residence operated or certified by the office of mental health, and has not, according to criteria promulgated by the department consistent with this title, sufficient income, or in the case of a person sixty-five years of age or older, certified blind, or certified disabled, sufficient income and resources, including available support from responsible relatives, to meet all the costs of required medical care and services available under this title.

(d) Conditions of eligibility. A person shall not be eligible for medical assistance under this title unless he or she:

(1) is a resident of the state, or, while temporarily in the state, requires immediate medical care which is not otherwise available, provided that such person did not enter the state for the purpose of obtaining such medical care; and

(2) assigns to the appropriate social services official or to the department, in accordance with department regulations: (i) any benefits which are available to him or her individually from any third party for care or other medical benefits available under this title and which are otherwise assignable pursuant to a contract or any agreement with such third party; or (ii) any rights, of the individual or of any other person who is eligible for medical assistance under this title and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support specified as support for the purpose of medical care by a court or administrative order; and

(3) cooperates with the appropriate social services official or the department in establishing paternity or in establishing, modifying, or enforcing a support order with respect to his or her child; provided, however, that nothing herein contained shall be construed to require a

payment under this title for care or services, the cost of which may be met in whole or in part by a third party; notwithstanding the foregoing, a social services official shall not require such cooperation if the social services official or the department determines that such actions would be detrimental to the best interest of the child, applicant, or recipient, or with respect to pregnant women during pregnancy and during the one year period beginning on the last day of pregnancy, in accordance with procedures and criteria established by regulations of the department consistent with federal law; and

(4) applies for and utilizes group health insurance benefits available through a current or former employer, including benefits for a spouse and dependent children, in accordance with the regulations of the department.

(e) Conditions of coverage. An otherwise eligible person shall not be entitled to medical assistance coverage of care, services, and supplies under this title while he or she:

(1) is an inmate or patient in an institution or facility wherein medical assistance may not be provided in accordance with applicable federal or state requirements, except for persons described in subparagraph ten of paragraph (c) of this subdivision or subdivision one-a or subdivision one-b of this section; or except for certain services provided to persons in a correctional institution or facility permitted by a waiver authorized pursuant to section eleven hundred fifteen of the federal social security act; if, so long as, and to the extent federal financial participation is available for such expenditures provided pursuant to such waiver; or

(2) is a patient in a public institution operated primarily for the treatment of tuberculosis or care of the mentally disabled, with the exception of: (i) a person sixty-five years of age or older and a patient in any such institution; (ii) a person under twenty-one years of age and receiving in-patient psychiatric services in a public institution operated primarily for the care of the mentally disabled; (iii) a patient in a public institution operated primarily for the care of individuals with developmental disabilities who is receiving medical care or treatment in that part of such institution that has been approved pursuant to law as a hospital or nursing home; (iv) a patient in an institution operated by the state department of mental hygiene,

while under care in a hospital on release from such institution for the purpose of receiving care in such hospital; (v) is a person residing in a community residence or a residential care center for adults; or (vi) certain services provided to persons in an institution for mental diseases permitted by a waiver authorized pursuant to section eleven hundred fifteen of the federal social security act; if, so long as, and to the extent federal financial participation is available for such expenditures provided pursuant to such waiver.

(f) Notwithstanding any inconsistent provision of this title, for an individual who has income in excess of an applicable income eligibility standard and is allowed to achieve eligibility for medical assistance under this title by incurring medical expenses equal to the amount of such excess income, the amount of excess income may be calculated by comparing the individual's MAGI household income to the MAGI-equivalent of the applicable income eligibility standard; provided, however, that medical assistance shall be furnished pursuant to this paragraph only if, for so long as, and to the extent that federal financial participation is available therefor. The commissioner of health shall make any amendments to the state plan for medical assistance, or apply for any waiver or approval under the federal social security act that are necessary to carry out the provisions of this paragraph.

(g) Coverage of certain noncitizens. (1) Applicants and recipients who are lawfully admitted for permanent residence, or who are permanently residing in the United States under color of law, or who are non-citizens in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15); who are MAGI eligible pursuant to paragraph (b) of this subdivision; and who would be ineligible for medical assistance coverage under subdivisions one and two of section three hundred sixty-five-a of this title solely due to their immigration status if the provisions of section one hundred twenty-two of this chapter were applied, shall only be eligible for assistance under this title if enrolled in a standard health plan offered by a basic health program established pursuant to section three hundred sixty-nine-gg of this article or a standard health plan offered by a 1332 state innovation program established pursuant to section three hundred sixty-nine-ii of this article if such program is established and operating.

(2) With respect to a person described in subparagraph one of this

paragraph who is enrolled in a standard health plan, medical assistance coverage shall mean:

(i) payment of required premiums and other cost-sharing obligations under the standard health plan that exceed the person's co-payment obligation under subdivision six of section three hundred sixty-seven-a of this title; and

(ii) payment for services and supplies described in subdivision one or two of section three hundred sixty-five-a of this title, as applicable, but only to the extent that such services and supplies are not covered by the standard health plan.

(3) Nothing in this subdivision shall prevent a person described in subparagraph one of this paragraph from qualifying for or receiving medical assistance while his or her enrollment in a standard health plan is pending, in accordance with applicable provisions of this title.

(4) (a) Applicants and recipients who are age sixty-five or older, who are otherwise eligible for medical assistance under this section, but for their immigration status, are eligible for medical assistance according to the following:

* (b) individuals eligible for medical assistance pursuant to subparagraph (a) of this paragraph shall participate in and receive covered benefits available through a managed care provider under section three hundred sixty-four-j of this article that is certified pursuant to section forty-four hundred three of the public health law; provided, however, to the extent that any covered benefits available through such managed care providers as of January first, two thousand twenty-three are transitioned to fee-for-service coverage, then such individuals shall continue to be entitled to these benefits in the fee-for-service program, rather than through a managed care provider.

* NB Effective until January 1, 2027

* (b) individuals eligible for medical assistance pursuant to clause (a) of this subparagraph shall receive the equivalent of the covered benefits available through a managed care provider under section three hundred sixty-four-j of this article that is certified pursuant to section forty-four hundred three of the public health law through the fee-for-service program, including any covered benefits available through such managed care providers as of January first, two thousand twenty-three that were subsequently transitioned to fee-for-service

coverage.

* NB Effective January 1, 2027

1-a. Notwithstanding any other provision of law, in the event that a person who is an incarcerated individual of a state or local correctional facility, as defined in section two of the correction law, or an eligible juvenile inmate of a public institution, as defined in subsection (nn) of section nineteen hundred two of the social security act, was in receipt of medical assistance pursuant to this title immediately prior to being admitted to such facility or public institution, or for juveniles determined eligible for such medical assistance while an inmate of a public institution, such person shall remain eligible for medical assistance while an incarcerated individual, except that no medical assistance shall be furnished pursuant to this title for any care, services, or supplies provided during such time as the person is an incarcerated individual; provided, however, that nothing herein shall be deemed as preventing the provision of medical assistance for inpatient hospital services furnished to an incarcerated individual at a hospital outside of the premises of such correctional facility or public institution, or pursuant to other federal authority authorizing the provision of medical assistance to an incarcerated individual of a state or local correctional facility during the thirty days prior to release, to the extent that federal financial participation is available for the costs of such services. Upon release from such facility or public institution, such person shall continue to be eligible for receipt of medical assistance furnished pursuant to this title until such time as the person is determined to no longer be eligible for receipt of such assistance. To the extent permitted by federal law, the time during which such person is an incarcerated individual shall not be included in any calculation of when the person must recertify his or her eligibility for medical assistance in accordance with this article. The state may seek federal authority to provide medical assistance for transitional services including but not limited to medical, prescription, and care coordination services for high needs incarcerated individuals in state and local correctional facilities during the thirty days prior to release.

1-b. Notwithstanding any other provision of law, in the event that a person who is an inpatient in an institution for mental diseases, as defined by federal law and regulations, and who was in receipt of medical assistance pursuant to this title immediately prior to being admitted to such facility, or who was directly admitted to such facility after being an inpatient in another institution for mental diseases and who was in receipt of medical assistance prior to admission to such transferring institution, such person shall remain eligible for medical assistance while an inpatient in such facility; provided, however, that no medical assistance shall be furnished pursuant to this title for any care, services, or supplies provided during the time that such person is an inpatient, except to the extent that federal financial participation is available for the costs of such care, services, or supplies. Upon release from such facility, such person shall continue to be eligible for receipt of medical assistance furnished pursuant to this title until such time as the person is determined to no longer be eligible for receipt of such assistance. To the extent permitted by federal law, the time during which such person is an inpatient in an institution for mental diseases shall not be included in any calculation of when the person must recertify his or her eligibility for medical assistance in accordance with this article.

2. (a) The following income and resources shall be exempt and shall not be taken into consideration in determining a person's eligibility for medical care, services and supplies available under this title:

(1) (i) for applications for medical assistance filed on or before December thirty-first, two thousand five, a homestead which is essential and appropriate to the needs of the household;

(ii) for applications for medical assistance filed on or after January first, two thousand six, a homestead which is essential and appropriate to the needs of the household; provided, however, that in determining eligibility of an individual for medical assistance for nursing facility services and other long term care services, the individual shall not be eligible for such assistance if the individual's equity interest in the homestead exceeds seven hundred fifty thousand dollars; provided further, that the dollar amount specified in this clause shall be increased, beginning with the year two thousand eleven, from year to

year, in an amount to be determined by the secretary of the federal department of health and human services, based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest one thousand dollars. If such secretary does not determine such an amount, the department of health shall increase such dollar amount based on such increase in the consumer price index. Nothing in this clause shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the homestead. The home equity limitation established by this clause shall be waived in the case of a demonstrated hardship, as determined pursuant to criteria established by such secretary. The home equity limitation shall not apply if one or more of the following persons is lawfully residing in the individual's homestead: (A) the spouse of the individual; or (B) the individual's child who is under the age of twenty-one, or is blind or permanently and totally disabled, as defined in section 1614 of the federal social security act.

(2) essential personal property;

(3) a burial fund, to the extent allowed as an exempt resource under the cash assistance program to which the applicant is most closely related;

(4) savings in amounts equal to one hundred fifty percent of the income amount permitted under subparagraph seven of this paragraph, provided, however, that the amounts for one and two person households shall not be less than the amounts permitted to be retained by households of the same size in order to qualify for benefits under the federal supplemental security income program;

(5) (i) such income as is disregarded or exempt under the cash assistance program to which the applicant is most closely related for purposes of this subparagraph, cash assistance program means either the aid to dependent children program as it existed on the sixteenth day of July, nineteen hundred ninety-six, or the supplemental security income program; and

(ii) such income of a disabled person (as such term is defined in section 1614(a)(3) of the federal social security act (42 U.S.C. section 1382c(a)(3)) or in accordance with any other rules or regulations established by the social security administration), that is deposited in trusts as defined in clause (iii) of subparagraph two of paragraph (b)

of this subdivision in the same calendar month within which said income is received;

(6) health insurance premiums;

(7) income based on the number of family members in the medical assistance household, as defined in regulations by the commissioner consistent with federal regulations under title XIX of the federal social security act that does not exceed one hundred thirty-eight percent of the federal poverty line for the applicable family size, which shall be calculated in accordance with guidance issued by the United States secretary for health and human services and with other applicable provisions of this section;

(8) No other income or resources, including federal old-age, survivors and disability insurance, state disability insurance or other payroll deductions, whether mandatory or optional, shall be exempt and all other income and resources shall be taken into consideration and required to be applied toward the payment or partial payment of the cost of medical care and services available under this title, to the extent permitted by federal law.

(9) Subject to subparagraph eight, the department, upon the application of a local social services district, after passage of a resolution by the local legislative body authorizing such application, may adjust the income exemption based upon the variations between cost of shelter in urban areas and rural areas in accordance with standards prescribed by the United States secretary of health, education and welfare.

(10) (i) A person who is receiving or is eligible to receive federal supplemental security income payments and/or additional state payments is entitled to a personal needs allowance as follows:

(A) for the personal expenses of a resident of a residential health care facility, as defined by section twenty-eight hundred one of the public health law, the amount of fifty-five dollars per month;

(B) for the personal expenses of a resident of an intermediate care facility operated or licensed by the office for people with developmental disabilities or a patient of a hospital operated by the office of mental health, as defined by subdivision ten of section 1.03 of the mental hygiene law, the amount of thirty-five dollars per month.

(ii) A person who neither receives nor is eligible to receive federal

supplemental security income payments and/or additional state payments is entitled to a personal needs allowance as follows:

(A) for the personal expenses of a resident of a residential health care facility, as defined by section twenty-eight hundred one of the public health law, the amount of fifty dollars per month;

(B) for the personal expenses of a resident of an intermediate care facility operated or licensed by the office for people with developmental disabilities or a patient of a hospital operated by the office of mental health, as defined by subdivision ten of section 1.03 of the mental hygiene law, the amount of thirty-five dollars per month.

(iii) Notwithstanding the provisions of clauses (i) and (ii) of this subparagraph, the personal needs allowance for a person who is a veteran having neither a spouse nor a child, or a surviving spouse of a veteran having no child, who receives a reduced pension from the federal veterans administration, and who is a resident of a nursing facility, as defined in section 1919 of the federal social security act, shall be equal to such reduced monthly pension but shall not exceed ninety dollars per month.

(11) subject to the availability of federal financial participation, any amount, including earnings thereon, in a qualified NY ABLE account as established pursuant to article eighty-four of the mental hygiene law, any contributions to such NY ABLE account, and any distribution for qualified disability expenses from such account; provided however, that such exemption shall be consistent with section 529A of the Internal Revenue Code of 1986, as amended.

* (b) (1) In establishing standards for determining eligibility for and amount of such assistance, the department shall take into account only such income and resources, in accordance with federal requirements, as are available to the applicant or recipient and as would not be required to be disregarded or set aside for future needs, and there shall be a reasonable evaluation of any such income or resources. There shall not be taken into consideration the financial responsibility of any individual for any applicant or recipient of assistance under this title unless such applicant or recipient is such individual's spouse or such individual's child who is under twenty-one years of age. In determining the eligibility of a child who is categorically eligible as blind or disabled, as determined under regulations prescribed by the

social security act for medical assistance, the income and resources of parents or spouses of parents are not considered available to that child if she/he does not regularly share the common household even if the child returns to the common household for periodic visits. In the application of standards of eligibility with respect to income, costs incurred for medical care, whether in the form of insurance premiums or otherwise, shall be taken into account. Any person who is eligible for, or reasonably appears to meet the criteria of eligibility for, benefits under title XVIII of the federal social security act shall be required to apply for and fully utilize such benefits in accordance with this chapter.

(2) (a) Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, upon the request of the social services district the commissioner shall, subject to the approval of the director of the budget and the procurement of the applicable federal waiver, authorize demonstration projects in up to five social services districts, or portions thereof, for the purpose of testing the feasibility of utilizing a special medical assistance income eligibility standard for certain persons in general hospitals on alternate care status who have been determined medically eligible for care in the community, in order to ease the financial burden of the legally responsible relatives. For any person sixty-five years of age or older residing in such social services districts, who is in a general hospital on alternate care status awaiting placement in a nursing home or intermediate care facility, as to whom it has been determined by the social services district that such person can be sustained in the community with in-home services at a cost not exceeding seventy-five percent of the average cost of care in a nursing home or intermediate care facility, and who meets such other criteria as the commissioner may establish, the social services district may, where it is beneficial to the applicant and legally responsible relatives, make a separate eligibility determination for such person, by adding the income of such person and support considered available from the legally responsible relative determined in accordance with regulations of the department, and comparing this sum to the medical assistance income exemption level for a household of one.

(b) In addition to the authorization provided for in clause (a), the

commissioner shall, upon request of a social services district, authorize one social services district, or a portion thereof, to use the special medical assistance income eligibility standard established in clause (a) for persons: who are sixty-five years of age or older in general hospitals or in the community and who are medically eligible for placement in a nursing home or intermediate care facility; and who it has been determined by the social services district can be sustained in the community with in-home services at a cost not to exceed the average cost of care in a nursing home or intermediate care facility.

(c) No provision of this subparagraph shall be construed so as to deny any benefit to a person otherwise eligible for medical assistance in accordance with this chapter.

(d) Resource eligibility shall be established in accordance with the requirements of paragraph (a) of this subdivision.

(e) This subparagraph shall be effective if, and as long as, federal financial participation is available.

* NB Expired March 31, 1988

* NB There are 2 sb 2 ¶(b)'s

* (b) (1) In establishing standards for determining eligibility for and amount of such assistance, the department shall take into account only such income and resources, in accordance with federal requirements, as are available to the applicant or recipient and as would not be required to be disregarded or set aside for future needs, and there shall be a reasonable evaluation of any such income or resources. The department shall not consider the availability of an option for an accelerated payment of death benefits or special surrender value pursuant to paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law, or an option to enter into a viatical settlement pursuant to the provisions of article seventy-eight of the insurance law, as an available resource in determining eligibility for an amount of such assistance, provided, however, that the payment of such benefits shall be considered in determining eligibility for and amount of such assistance. There shall not be taken into consideration the financial responsibility of any individual for any applicant or recipient of assistance under this title unless such applicant or recipient is such individual's spouse or such individual's child who is under twenty-one years of age. In determining the

eligibility of a child who is categorically eligible as blind or disabled, as determined under regulations prescribed by the social security act for medical assistance, the income and resources of parents or spouses of parents are not considered available to that child if she/he does not regularly share the common household even if the child returns to the common household for periodic visits. In the application of standards of eligibility with respect to income, costs incurred for medical care, whether in the form of insurance premiums or otherwise, shall be taken into account. Any person who is eligible for, or reasonably appears to meet the criteria of eligibility for, benefits under title XVIII of the federal social security act shall be required to apply for and fully utilize such benefits in accordance with this chapter.

(2) In evaluating the income and resources available to an applicant for or recipient of medical assistance, for purposes of determining eligibility for and the amount of such assistance, the department must consider assets held in or paid from trusts created by such applicant or recipient, as determined pursuant to the regulations of the department, in accordance with the provisions of this subparagraph.

(i) In the case of a revocable trust created by an applicant or recipient, as determined pursuant to regulations of the department: the trust corpus must be considered to be an available resource; payments made from the trust to or for the benefit of such applicant or recipient must be considered to be available income; and any other payments from the trust must be considered to be assets disposed of by such applicant or recipient for purposes of paragraph (d) of subdivision five of this section.

(ii) In the case of an irrevocable trust created by an applicant or recipient, as determined pursuant to regulations of the department: any portion of the trust corpus, and of the income generated by the trust corpus, from which no payment can under any circumstances be made to such applicant or recipient must be considered, as of the date of establishment of the trust, or, if later, the date on which payment to the applicant or recipient is foreclosed, to be assets disposed of by such applicant or recipient for purposes of paragraph (d) of subdivision five of this section; any portion of the trust corpus, and of the income generated by the trust corpus, from which payment could be made to or

for the benefit of such applicant or recipient must be considered to be an available resource; payments made from the trust to or for the benefit of such applicant or recipient must be considered to be available income; and any other payments from the trust must be considered to be assets disposed of by such applicant or recipient for purposes of paragraph (d) of subdivision five of this section.

(iii) Notwithstanding the provisions of clauses (i) and (ii) of this subparagraph, in the case of an applicant or recipient who is disabled, as such term is defined in section 1614(a)(3) of the federal social security act, the department must not consider as available income or resources the corpus or income of the following trusts which comply with the provisions of the regulations authorized by clause (iv) of this subparagraph: (A) a trust containing the assets of such a disabled individual which was established for the benefit of the disabled individual while such individual was under sixty-five years of age by the individual, a parent, grandparent, legal guardian, or court of competent jurisdiction, if upon the death of such individual the state will receive all amounts remaining in the trust up to the total value of all medical assistance paid on behalf of such individual; (B) and a trust containing the assets of such a disabled individual established and managed by a non-profit association which maintains separate accounts for the benefit of disabled individuals, but, for purposes of investment and management of trust funds, pools the accounts, provided that accounts in the trust fund are established solely for the benefit of individuals who are disabled as such term is defined in section 1614(a)(3) of the federal social security act by such disabled individual, a parent, grandparent, legal guardian, or court of competent jurisdiction, and to the extent that amounts remaining in the individual's account are not retained by the trust upon the death of the individual, the state will receive all such remaining amounts up to the total value of all medical assistance paid on behalf of such individual. Notwithstanding any law to the contrary, a not-for-profit corporation may, in furtherance of and as an adjunct to its corporate purposes, act as trustee of a trust for persons with disabilities established pursuant to this subclause, provided that a trust company, as defined in subdivision seven of section one hundred-c of the banking law, acts as co-trustee.

(iv) The department shall promulgate such regulations as may be necessary to carry out the provisions of this subparagraph. Such regulations shall include provisions for: assuring the fulfillment of fiduciary obligations of the trustee with respect to the remainder interest of the department or state; monitoring pooled trusts; applying this subdivision to legal instruments and other devices similar to trusts, in accordance with applicable federal rules and regulations; and establishing procedures under which the application of this subdivision will be waived with respect to an applicant or recipient who demonstrates that such application would work an undue hardship on him or her, in accordance with standards specified by the secretary of the federal department of health and human services. Such regulations may require: notification of the department of the creation or funding of such a trust for the benefit of an applicant for or recipient of medical assistance; notification of the department of the death of a beneficiary of such a trust who is a current or former recipient of medical assistance; in the case of a trust, the corpus of which exceeds one hundred thousand dollars, notification of the department of transactions tending to substantially deplete the trust corpus; notification of the department of any transactions involving transfers from the trust corpus for less than fair market value; the bonding of the trustee when the assets of such a trust equal or exceed one million dollars, unless a court of competent jurisdiction waives such requirement; and the bonding of the trustee when the assets of such a trust are less than one million dollars, upon order of a court of competent jurisdiction. The department, together with the department of financial services, shall promulgate regulations governing the establishment, management and monitoring of trusts established pursuant to subclause (B) of clause (iii) of this subparagraph in which a not-for-profit corporation and a trust company serve as co-trustees.

(v) Notwithstanding any acts, omissions or failures to act of a trustee of a trust which the department or a local social services official has determined complies with the provisions of clause (iii) and the regulations authorized by clause (iv) of this subparagraph, the department must not consider the corpus or income of any such trust as available income or resources of the applicant or recipient who is disabled, as such term is defined in section 1614(a)(3) of the federal

social security act. The department's remedy for redress of any acts, omissions or failures to act by such a trustee which acts, omissions or failures are considered by the department to be inconsistent with the terms of the trust, contrary to applicable laws and regulations of the department, or contrary to the fiduciary obligations of the trustee shall be the commencement of an action or proceeding under subdivision one of section sixty-three of the executive law to safeguard or enforce the state's remainder interest in the trust, or such other action or proceeding as may be lawful and appropriate as to assure compliance by the trustee or to safeguard and enforce the state's remainder interest in the trust.

(vi) The department shall provide written notice to an applicant for or recipient of medical assistance who is or reasonably appears to be eligible for medical assistance except for having income exceeding applicable income levels. The notice shall inform the applicant or recipient, in plain language, that in certain circumstances the medical assistance program does not count the income of disabled applicants and recipients if it is placed in a trust described in clause (iii) of this subparagraph. The notice shall be included with the eligibility notice provided to such applicants and recipients and shall reference where additional information may be found on the department's website. This clause shall not be construed to change any criterion for eligibility for medical assistance.

* NB There are 2 sb 2 ¶(b)'s

(3) (a) Social services officials shall authorize medical assistance for persons who would be eligible for such assistance except that their incomes exceed the applicable medical assistance income eligibility standard, which is determined according to paragraph (a) of subdivision two of this section, to become eligible for medical assistance by paying to their social services districts the amount by which their incomes exceed such income eligibility levels.

(b) Social services districts shall safeguard, by deposit in special accounts, any amounts paid to them by such recipients of medical assistance benefits. The amount of any medical assistance payments made to providers of medical assistance on behalf of such recipients, shall be charged against the amount in recipients' accounts. Districts shall, in accordance with their approved plans, periodically refund the

amounts, if any, by which the amounts in recipients' accounts exceed the amounts of any medical assistance payments made on their behalf. Districts shall report to the department amounts in recipients' accounts that are equal to the amount of medical assistance payments made on recipients' behalf.

(c) Eligibility under this subparagraph shall be authorized only in accordance with plans submitted by social services districts and approved by the commissioner. Plans must be submitted by social services districts to the commissioner no later than February first, nineteen hundred ninety-six. The commissioner shall only approve plans that include a detailed description of how the district will administer the program, enroll recipients, safeguard monies in recipients' accounts, reconcile payments made to providers of medical assistance services with account balances and refund the amounts by which recipients' account funds exceed the amounts paid to providers on their behalf.

(d) By January first, nineteen hundred ninety-five, the department shall submit to the governor and the legislature a report evaluating the demonstration programs effect on enrollees' access to medical assistance care and services and any other subjects the commissioner deems relevant.

(e) Notwithstanding any other provision of law, administrative expenditures incurred by local social services districts in relation to this section shall be reimbursable as provided in subdivision one of section three hundred sixty-eight-a of this article.

3. (a) Medical assistance shall be furnished to applicants in cases where, although such applicant has a responsible relative with sufficient income and resources to provide medical assistance as determined by the regulations of the department, the income and resources of the responsible relative are not available to such applicant because of the absence of such relative or the refusal or failure of such relative to provide the necessary care and assistance. In such cases, however, the furnishing of such assistance shall create an implied contract with such relative, and the cost thereof may be recovered from such relative in accordance with title six of article three and other applicable provisions of law.

(b) (i) When a legally responsible relative agrees or is ordered by a

court or administrative tribunal of competent jurisdiction to provide health insurance or other medical care coverage for his or her dependents or other persons, and such dependents or other persons are applicants for, recipients of or otherwise entitled to receive medical assistance pursuant to this title, the department and social services officials shall be subrogated to any rights that the responsible relative may have to obtain reimbursement from a third party for the costs of medical care for such dependents or persons.

(ii) Upon receipt of an application, or upon a determination of eligibility, for assistance pursuant to this title, the department and social services officials shall be deemed to have furnished assistance to any such dependent or person entitled to receive medical assistance pursuant to this title and shall be subrogated to any rights such person may have to third party reimbursement as provided in paragraph (b) of subdivision two of section three hundred sixty-seven-a of this title.

(iii) For purposes of determining whether a person is legally responsible for a person receiving assistance under this title, the following shall be dispositive: a copy of a support order issued pursuant to section four hundred sixteen or five hundred forty-five of the family court act or section two hundred thirty-six or two hundred forty of the domestic relations law; an order described in paragraph (h) of subdivision four of this section; an order of a court or administrative tribunal of competent jurisdiction pursuant to the provisions of this subdivision; or any other order of a court or administrative tribunal of competent jurisdiction subject to the provisions of this subdivision. If a notice of subrogation as described in paragraph (b) of subdivision two of section three hundred sixty-seven-a of this title is accompanied by dispositive documentation that a person is legally responsible for a person receiving assistance under this title, any third party liable for reimbursement for the costs of medical care shall accord the department or any social services official the rights of and benefits available to the responsible relative that pertain to the provision of medical care to any persons entitled to medical assistance pursuant to this title for whom the relative is legally responsible.

(c) The provisions of this subdivision shall not be construed to diminish the authority of a social services official to bring a

proceeding pursuant to the provisions of this chapter or other provisions of law (1) to compel any responsible relative to contribute to the support of any person receiving or liable to become in need of medical assistance, or (2) to recover from a recipient or a responsible relative the cost of medical assistance not correctly paid.

4. Special eligibility provisions.

(a) Transitional medical assistance.

(1) Notwithstanding any other provision of law, each family which was eligible for medical assistance pursuant to subparagraph four of paragraph (b) of subdivision one of this section in at least one of the six months immediately preceding the month in which such family became ineligible for such assistance because of income from the employment of the caretaker relative shall, while such family includes a dependent child, remain eligible for medical assistance for twelve calendar months immediately following the month in which such family would otherwise be determined to be ineligible for medical assistance pursuant to the provisions of this title and the regulations of the department governing income and resource limitations relating to eligibility determinations for families described in subparagraph four of paragraph (b) of subdivision one of this section.

(2) (i) Upon giving notice of termination of medical assistance provided pursuant to subparagraph four of paragraph (b) of subdivision one of this section, the department shall notify each such family of its rights to extended benefits under subparagraph one of this paragraph and describe the conditions under which such extension may be terminated.

(ii) The department shall promulgate regulations implementing the requirements of this subparagraph and subparagraph one of this paragraph relating to the conditions under which extended coverage hereunder may be terminated, the scope of coverage, and the conditions under which coverage may be extended pending a redetermination of eligibility. Such regulations shall, at a minimum, provide for: termination of such coverage at the close of the first month in which the family ceases to include a dependent child; notice of termination prior to the effective date of any terminations; coverage under employee health plans and health maintenance organizations; and disqualification of persons for extended coverage benefits under this paragraph for fraud.

(3) Notwithstanding any inconsistent provision of law, each family which was eligible for medical assistance pursuant to subparagraph four of paragraph (b) of subdivision one of this section in at least three of the six months immediately preceding the month in which such family became ineligible for such assistance as a result, wholly or partly, of the collection or increased collection of spousal support pursuant to part D of title IV of the federal social security act, shall, for purposes of medical assistance eligibility, be considered to be eligible for medical assistance pursuant to subparagraph four of paragraph (b) of subdivision one of this section for an additional four calendar months beginning with the month ineligibility for such assistance begins.

(b) Pregnant women and children.

(1) A pregnant woman eligible for medical assistance under subparagraph two or four of paragraph (b) of subdivision one of this section on any day of her pregnancy will continue to be eligible for such care and services for a period of one year beginning on the last day of pregnancy, without regard to any change in the income of the family that includes the pregnant woman, even if such change otherwise would have rendered her ineligible for medical assistance.

(2) A child born to a woman eligible for and receiving medical assistance on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance on the date of such birth and to remain eligible for such assistance for a period of one year, so long as the child is a member of the woman's household and the woman remains eligible for such assistance or would remain eligible for such assistance if she were pregnant.

(3) A child under the age of nineteen who is determined eligible for medical assistance under the provisions of this section, shall, consistent with applicable federal requirements, remain eligible for such assistance until the earlier of:

(A) the last day of the month which is twelve months following the determination or renewal of eligibility for such assistance; or

(B) the last day of the month in which the child reaches the age of nineteen.

(4) An infant eligible under subparagraph two or four of paragraph (b) of subdivision one of this section who is receiving medically necessary in-patient services for which medical assistance is provided on the date

the child attains one year of age, and who, but for attaining such age, would remain eligible for medical assistance under such subparagraph, shall continue to remain eligible until the end of the stay for which in-patient services are being furnished.

(5) A child eligible under subparagraph three of paragraph (b) of subdivision one of this section who is receiving medically necessary in-patient services for which medical assistance is provided on the date the child attains nineteen years of age, and who, but for attaining such age, would remain eligible for medical assistance under this paragraph, shall continue to remain eligible until the end of the stay for which in-patient services are being furnished.

(6) A woman who was pregnant while in receipt of medical assistance who subsequently loses her eligibility for medical assistance shall have her eligibility for medical assistance continued for a period of twenty-four months from the end of the month in which the sixtieth day following the end of her pregnancy occurs, but only for Federal Title X services which are eligible for reimbursement by the federal government at a rate of ninety percent; provided, however, that such ninety percent limitation shall not apply to those services identified by the commissioner as services, including treatment for sexually transmitted diseases, generally performed as part of or as a follow-up to a service eligible for such ninety percent reimbursement; and provided further, however, that nothing in this paragraph shall be deemed to affect payment for such Title X services if federal financial participation is not available for such care, services and supplies.

(c) Continuous coverage for adults. Notwithstanding any other provision of law, a person whose eligibility for medical assistance is based on the modified adjusted gross income of the person or the person's household, and who loses eligibility for such assistance for a reason other than citizenship status, lack of state residence, or failure to provide a valid social security number, before the end of a twelve month period beginning on the effective date of the person's initial eligibility for such assistance, or before the end of a twelve month period beginning on the date of any subsequent determination of eligibility based on modified adjusted gross income, shall have his or her eligibility for such assistance continued until the end of such twelve month period, provided that federal financial participation in

the costs of such assistance is available.

(d) Breast and cervical cancer treatment.

(1) Persons who are not eligible for medical assistance under the terms of section 1902(a)(10)(A)(i) of the federal social security act are eligible for medical assistance coverage during the treatment of breast or cervical cancer, subject to the provisions of this paragraph.

(2) (i) Medical assistance is available under this paragraph to persons who are under sixty-five years of age, have been screened for breast and/or cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program and need treatment for breast or cervical cancer, and are not otherwise covered under creditable coverage as defined in the federal public health service act; provided however that medical assistance shall be furnished pursuant to this clause only to the extent permitted under federal law, if, for so long as, and to the extent that federal financial participation is available therefor.

(ii) Medical assistance is available under this paragraph to persons who meet the requirements of clause (i) of this subparagraph but for their age and/or gender, who have been screened for breast and/or cervical cancer under the program described in title one-A of article twenty-four of the public health law and need treatment for breast or cervical cancer, and are not otherwise covered under creditable coverage as defined in the federal public health service act; provided however that medical assistance shall be furnished pursuant to this clause only if and for so long as the provisions of clause (i) of this subparagraph are in effect.

(3) Medical assistance provided to a person under this paragraph shall be limited to the period in which such person requires treatment for breast or cervical cancer.

(4) (i) The commissioner of health shall promulgate such regulations as may be necessary to carry out the provisions of this paragraph. Such regulations shall include, but not be limited to: eligibility requirements; a description of the medical services which are covered; and a process for providing presumptive eligibility when a qualified entity, as defined by the commissioner, determines on the basis of preliminary information that a person meets the requirements for eligibility under this paragraph.

(ii) For purposes of determining eligibility for medical assistance under this paragraph, resources available to such individual shall not be considered nor required to be applied toward the payment or part payment of the cost of medical care, services and supplies available under this paragraph.

(iii) An individual shall be eligible for presumptive eligibility for medical assistance under this paragraph in accordance with subdivision four of section three hundred sixty-four-i of this title.

(5) The commissioner of health shall, consistent with this title, make any necessary amendments to the state plan for medical assistance submitted pursuant to section three hundred sixty-three-a of this title, in order to ensure federal financial participation in expenditures under this paragraph. Notwithstanding any provision of law to the contrary, the provisions of clause (i) of subparagraph two of this paragraph shall be effective only if and for so long as federal financial participation is available in the costs of medical assistance furnished thereunder.

(e) Colon and prostate cancer treatment.

(1) Notwithstanding any other provision of law to the contrary, a person who has been screened or referred for screening for colon or prostate cancer by the cancer services screening program, as administered by the department of health, and has been diagnosed with colon or prostate cancer is eligible for medical assistance for the duration of his or her treatment for such cancer.

(2) Persons eligible for medical assistance under this paragraph shall have an income of two hundred fifty percent or less of the comparable federal income official poverty line as defined and annually revised by the federal office of management and budget.

(3) An individual shall be eligible for presumptive eligibility for medical assistance under this paragraph in accordance with subdivision four of section three hundred sixty-four-i of this title.

(4) Medical assistance is available under this paragraph to persons who are under sixty-five years of age, and are not otherwise covered under creditable coverage as defined in the federal Public Health Service Act.

5. (a) In determining the initial or continuing eligibility of any person for assistance under this title, there shall be included in the

amount of resources considered available to such person the uncompensated value of any resource transferred prior to the date of application for medical assistance as specified in paragraphs (b), (c), (d) and (e) of this subdivision, and such person shall be ineligible for such assistance for such period or periods as specified in this subdivision.

(b) For transfers made on or after April tenth, nineteen hundred eighty-two and prior to October first, nineteen hundred eighty-nine:

(1) a nonexempt resource shall mean any resource which if retained by such person would not be exempt from consideration under the provisions of subdivision two of this section;

(2) any transfer of a nonexempt resource made within twenty-four months prior to the date of a person's application for medical assistance shall be presumed to have been made for the purpose of qualifying for such assistance; however, if such person furnishes evidence to establish that the transfer was exclusively for some other purpose, the uncompensated value shall not be considered available to such person in determining his or her initial or continued eligibility for medical assistance;

(3) the uncompensated value of any such resource shall be the fair market value of such resource at the time of transfer, minus the amount of the compensation received by the person in exchange for the resource;

(4) any person determined to have excess resources of twelve thousand dollars or less because of the application of this paragraph shall remain ineligible for assistance under this title for a period of twenty-four months from the date of the transfer, or until such person can demonstrate that he or she has incurred medical expenses after the date of transfer in the amount of such excess above otherwise allowable resources, whichever period is shorter;

(5) any person determined to have excess resources of more than twelve thousand dollars because of the application of this paragraph shall remain ineligible for assistance under this title for a period which exceeds twenty-four months, which period shall be determined by adding an additional month of ineligibility for each two thousand dollars in excess of twelve thousand dollars, or until such person can demonstrate that he or she has incurred medical expenses after the date of transfer in the amount of such excess above otherwise allowable resources,

whichever period is shorter.

(c) For transfers made on or after October first, nineteen hundred eighty-nine:

(1) (i) "institutionalized person" means any person who is an in-patient in a nursing facility, or who is an in-patient in a medical facility and is receiving a level of care provided in a nursing facility, or who is receiving care, services or supplies pursuant to a waiver pursuant to subsection (c) of section nineteen hundred fifteen of the federal social security act.

(ii) "resources" includes any resources which would not be considered exempt from consideration under the provisions of subdivision two of this section, without regard to the exemption provided for in subparagraph one of paragraph (a) of such subdivision.

(iii) "nursing facility" means a nursing home as defined by section twenty-eight hundred one of the public health law.

(iv) "nursing facility services" means nursing care and health related services provided in a nursing facility, a level of care provided in a hospital which is equivalent to the care which is provided in a nursing facility and care, services or supplies provided pursuant to a waiver pursuant to subsection (c) of section nineteen hundred fifteen of the federal social security act.

(2) the uncompensated value of a resource shall be the fair market value of such resource at the time of transfer, minus the amount of the compensation received in exchange for the resource.

(3) any transfer of a resource by a person or such person's spouse for less than fair market value made within or after the thirty months immediately preceding the date the person becomes an institutionalized person or the date of application for medical assistance while an institutionalized person, if later, shall render the person ineligible for nursing facility services for a period specified in subparagraph four of this paragraph; however, an institutionalized person shall not be ineligible for nursing facility services solely by reason of any such transfer to the extent that:

(i) the resource transferred was a home and title to the home was transferred to: (A) the spouse of such person; or (B) a child of such person who is under the age of twenty-one years or certified blind or certified permanently and totally disabled, as defined by section two

hundred eight of this title; or (C) a sibling of such person who has an equity interest in such home and who resided in such home for a period of at least one year immediately before the date the person became an institutionalized person; or (D) a son or daughter of such person who was residing in such home for a period of at least two years immediately before the date such person became an institutionalized person, and who provided care to such person which permitted such person to reside at home rather than in an institution or facility; or

(ii) the resource was transferred to or for the sole benefit of such person's spouse, or from such person's spouse to or for the sole benefit of such person, or to his or her child who is certified blind or certified permanently and totally disabled; or

(iii) a satisfactory showing is made that: (A) the person or such person's spouse intended to dispose of the resource either at fair market value, or for other valuable consideration, or (B) the resource was transferred exclusively for a purpose other than to qualify for medical assistance; or

(iv) denial of eligibility would work an undue hardship, as defined by the commissioner which definition shall include the inability of the institutionalized person or such person's spouse to retrieve the resource or to obtain fair market value therefor despite his or her best efforts.

(4) Any transfer made by a person or the person's spouse under subparagraph three of this paragraph shall cause the person to be ineligible for nursing facility services, for services at a level of care equivalent to that of nursing facility services for the lesser of (i) a period of thirty months from the date of transfer, or (ii) a period equal to the total uncompensated value of the resources so transferred, divided by the average cost of nursing facility services to a private patient for a given period of time at the time of application as determined by the commissioner. For purposes of this subparagraph the average cost of nursing facility services to a private patient for a given period of time at the time of application shall be presumed to be one hundred twenty percent of the average medical assistance rate of payment as of the first day of January of each year for nursing facilities within the region as established pursuant to paragraph (b) of subdivision sixteen of section twenty-eight hundred seven-c of the

public health law wherein the applicant resides.

(d) For transfers made after August tenth, nineteen hundred ninety-three:

(1) (i) "assets" means all income and resources of an individual and of the individual's spouse, including income or resources to which the individual or the individual's spouse is entitled but which are not received because of action by: the individual or the individual's spouse; a person with legal authority to act in place of or on behalf of the individual or the individual's spouse; a person acting at the direction or upon the request of the individual or the individual's spouse; or by a court or administrative body with legal authority to act in place of or on behalf of the individual or the individual's spouse or at the direction or upon the request of the individual or the individual's spouse.

(ii) "blind" has the same meaning given to such term in section 1614(a)(2) of the federal social security act.

(iii) "disabled" has the same meaning given to such term in section 1614(a)(3) of the federal social security act.

(iv) "income" has the same meaning given to such term in section 1612 of the federal social security act.

(v) "resources" has the same meaning given to such term in section 1613 of the federal social security act, without regard, in the case of an institutionalized individual, to the exclusion provided for in subsection (a)(1) of such section.

(vi) "look-back period" means the thirty-six month period, or, in the case of payments from a trust or portions of a trust which are treated as assets disposed of by the individual pursuant to department regulations, the sixty-month period, immediately preceding the date that an institutionalized individual is both institutionalized and has applied for medical assistance.

(vii) "institutionalized individual" means any individual who is an in-patient in a nursing facility, including an intermediate care facility for individuals with developmental disabilities, or who is an in-patient in a medical facility and is receiving a level of care provided in a nursing facility, or who is receiving care, services or supplies pursuant to a waiver granted pursuant to subsection (c) of section 1915 of the federal social security act.

(viii) "intermediate care facility for individuals with developmental disabilities" means a facility certified under article sixteen of the mental hygiene law and which has a valid agreement with the department for providing intermediate care facility services and receiving payment therefor under title XIX of the federal social security act.

(ix) "nursing facility" means a nursing home as defined by section twenty-eight hundred one of the public health law and an intermediate care facility for individuals with developmental disabilities.

(x) "nursing facility services" means nursing care and health related services provided in a nursing facility; a level of care provided in a hospital which is equivalent to the care which is provided in a nursing facility; and care, services or supplies provided pursuant to a waiver granted pursuant to subsection (c) of section 1915 of the federal social security act.

(2) The uncompensated value of an asset is the fair market value of such asset at the time of transfer, minus the amount of the compensation received in exchange for the asset.

(3) In determining the medical assistance eligibility of an institutionalized individual, any transfer of an asset by the individual or the individual's spouse for less than fair market value made within or after the look-back period shall render the individual ineligible for nursing facility services for the period of time specified in subparagraph four of this paragraph. Notwithstanding the provisions of this subparagraph, an individual shall not be ineligible for services solely by reason of any such transfer to the extent that:

(i) in the case of an institutionalized individual, the asset transferred was a home and title to the home as transferred to: (A) the spouse of the individual; or (B) a child of the individual who is under the age of twenty-one years or blind or disabled; or (C) a sibling of the individual who has an equity interest in such home and who resided in such home for a period of at least one year immediately before the date the individual became an institutionalized individual; or (D) a child of the individual who was residing in such home for a period of at least two years immediately before the date the individual became an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility; or

(ii) the assets: (A) were transferred to the individual's spouse, or to another for the sole benefit of the individual's spouse; or (B) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse; or (C) were transferred to the individual's child who is blind or disabled, or to a trust established solely for the benefit of such child; or (D) were transferred to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled; or

(iii) a satisfactory showing is made that: (A) the individual or the individual's spouse intended to dispose of the assets either at fair market value, or for other valuable consideration; or (B) the assets were transferred exclusively for a purpose other than to qualify for medical assistance; or (C) all assets transferred for less than fair market value have been returned to the individual; or

(iv) denial of eligibility would cause an undue hardship, as determined pursuant to the regulations of the department in accordance with criteria established by the secretary of the federal department of health and human services.

(4) Any transfer made by an individual or the individual's spouse under subparagraph three of this paragraph shall cause the person to be ineligible for services for a period equal to the total, cumulative uncompensated value of all assets transferred during or after the look-back period, divided by the average monthly costs of nursing facility services provided to a private patient for a given period of time at the time of application, as determined pursuant to the regulations of the department. The period of ineligibility shall begin with the first day of the first month during or after which assets have been transferred for less than fair market value, and which does not occur in any other periods of ineligibility under this paragraph. For purposes of this subparagraph, the average monthly costs of nursing facility services to a private patient for a given period of time at the time of application shall be presumed to be one hundred twenty percent of the average medical assistance rate of payment as of the first day of January of each year for nursing facilities within the region wherein the applicant resides, as established pursuant to paragraph (b) of subdivision sixteen of section twenty-eight hundred seven-c of the public health law.

(5) In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(6) In the case of a trust established by the individual, as determined pursuant to the regulations of the department, any payment, other than a payment to or for the benefit of the individual, from a revocable trust is considered to be a transfer of assets by the individual and any payment, other than to or for the benefit of the individual, from the portion of an irrevocable trust which, under any circumstance, could be made available to the individual is considered to be a transfer of assets by the individual and, further, the value of any portion of an irrevocable trust from which no payment could be made to the individual under any circumstances is considered to be a transfer of assets by the individual for purposes of this section as of the date of establishment of the trust, or, if later, the date on which payment to the individual is foreclosed.

(e) For transfers made on or after February eighth, two thousand six:

(1)(i) "assets" means all income and resources of an individual and of the individual's spouse, including income and resources to which the individual or the individual's spouse is entitled but which are not received because of action by: the individual or the individual's spouse; a person with legal authority to act in place of or on behalf of the individual or the individual's spouse; a person acting at the direction or upon the request of the individual or the individual's spouse; or by a court or administrative body with legal authority to act in place of or on behalf of the individual or the individual's spouse or at the direction or upon the request of the individual or the individual's spouse;

(ii) "blind" has the same meaning given to such term in section 1614(a)(2) of the federal social security act.

(iii) "disabled" has the same meaning given to such term in section 1614(a)(3) of the federal social security act.

(iv) "income" has the same meaning given to such term in section 1612 of the federal social security act.

(v) "resources" has the same meaning given to such term in section 1613 of the federal social security act, without regard to the exclusion provided for in subsection (a)(1) of such section.

* (vi) "look-back period" means the sixty-month period immediately preceding the date that an institutionalized individual is both institutionalized and has applied for medical assistance, or in the case of a non-institutionalized individual, subject to federal approval, the thirty-month period immediately preceding the date that such non-institutionalized individual applies for medical assistance coverage of long term care services. Nothing herein precludes a review of eligibility for retroactive authorization for medical expenses incurred during the three months prior to the month of application for medical assistance.

* NB Effective until January 1, 2027

* (vi) "look-back period" means the sixty-month period immediately preceding the date that an institutionalized individual is both institutionalized and has applied for medical assistance, or in the case of a non-institutionalized individual, subject to federal approval, the thirty-month period immediately preceding the date that such non-institutionalized individual applies for medical assistance coverage of long term care services. Nothing herein precludes a review of eligibility for retroactive authorization for medical expenses incurred during the maximum allowable retroactive eligibility period under federal law.

* NB Effective January 1, 2027

(vii) "institutionalized individual" means any individual who is an in-patient in a nursing facility, including an intermediate care facility for individuals with developmental disabilities, or who is an in-patient in a medical facility and is receiving a level of care provided in a nursing facility, or who is described in section 1902(a)(10)(A)(ii)(VI) of the federal social security act.

(viii) "intermediate care facility for individuals with developmental disabilities" means a facility certified under article sixteen of the mental hygiene law and which has a valid agreement with the department for providing intermediate care facility services and receiving payment therefor under title XIX of the federal social security act.

(ix) "nursing facility" means a nursing home as defined by section

twenty-eight hundred one of the public health law and an intermediate care facility for individuals with developmental disabilities.

(x) "nursing facility services" means nursing care and health related services provided in a nursing facility; a level of care provided in a hospital which is equivalent to the care which is provided in a nursing facility; and care, services or supplies provided pursuant to a waiver granted pursuant to subsection (c) of section 1915 of the federal social security act or successor federal waiver.

(xi) "non-institutionalized individual" means an individual who is not an institutionalized individual, as defined in clause (vii) of this subparagraph.

(xii) "long term care services" means home health care services, private duty nursing services, personal care services, assisted living program services and such other services for which medical assistance is otherwise available under this chapter which are designated as long term care services in the regulations of the department.

(2) The uncompensated value of an asset is the fair market value of such asset at the time of transfer less any outstanding loans, mortgages, or other encumbrances on the asset, minus the amount of the compensation received in exchange for the asset.

(3) In determining the medical assistance eligibility of an institutionalized individual, any transfer of an asset by the individual or the individual's spouse for less than fair market value made within or after the look-back period shall render the individual ineligible for nursing facility services for the period of time specified in subparagraph five of this paragraph. In determining the medical assistance eligibility of a non-institutionalized individual, any transfer of an asset by the individual or the individual's spouse for less than fair market value made within or after the look-back period shall render the individual ineligible for community based long term care services for the period of time specified in subparagraph five of this paragraph. For purposes of this paragraph:

(i) the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless: the state is named as the beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant, or the state is named in the second position after a community spouse or minor or

disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value; and the annuity meets the requirements of section 1917(c)(1)(G) of the federal social security act;

(ii) the purchase of a life estate interest in another person's home shall be treated as the disposal of an asset for less than fair market value unless the purchaser resided in such home for a period of at least one year after the date of purchase;

(iii) the purchase of a promissory note, loan, or mortgage shall be treated as the disposal of an asset for less than fair market value unless such note, loan, or mortgage meets the requirements of section 1917(c)(1)(I) of the federal social security act.

(4) Notwithstanding the provisions of this paragraph, an individual shall not be ineligible for services solely by reason of any such transfer to the extent that:

(i) in the case of an institutionalized individual the asset transferred was a home and title to the home was transferred to: (A) the spouse of the individual; or (B) a child of the individual who is under the age of twenty-one years or blind or disabled; or (C) a sibling of the individual who has an equity interest in such home and who resided in such home for a period of at least one year immediately before the date the individual became an institutionalized individual; or (D) a child of the individual who was residing in such home for a period of at least two years immediately before the date the individual became an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility; or

(ii) the assets: (A) were transferred to the individual's spouse, or to another for the sole benefit of the individual's spouse; or (B) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse; or (C) were transferred to the individual's child who is blind or disabled, or to a trust established solely for the benefit of such child; or (D) were transferred to a trust established solely for the benefit of an individual under sixty-five years of age who is disabled; or

(iii) a satisfactory showing is made that: (A) the individual or the individual's spouse intended to dispose of the assets either at fair

market value, or for other valuable consideration; or (B) the assets were transferred exclusively for a purpose other than to qualify for medical assistance; or (C) all assets transferred for less than fair market value have been returned to the individual; or

(iv) denial of eligibility would cause an undue hardship, such that application of the transfer of assets provision would deprive the individual of medical care such that the individual's health or life would be endangered, or would deprive the individual of food, clothing, shelter, or other necessities of life. The commissioner of health shall develop a hardship waiver process which shall include a timely process for determining whether an undue hardship waiver will be granted and a timely process under which an adverse determination can be appealed. The commissioner of health shall provide notice of the hardship waiver process in writing to those individuals who are required to comply with the transfer of assets provision under this section. If such an individual is an institutionalized individual, the facility in which he or she is residing shall be permitted to file an undue hardship waiver application on behalf of such individual with the consent of the individual or the personal representative of the individual.

(5) Any transfer made by an individual or the individual's spouse under subparagraph three of this paragraph shall cause the person to be ineligible for services for a period equal to the total, cumulative uncompensated value of all assets transferred during or after the look-back period, divided by the average monthly costs of nursing facility services provided to a private patient for a given period of time at the time of application, as determined pursuant to the regulations of the department. For purposes of this subparagraph, the average monthly costs of nursing facility services to a private patient for a given period of time at the time of application shall be presumed to be one hundred twenty percent of the average medical assistance rate of payment as of the first day of January of each year for nursing facilities within the region where the applicant resides, as established pursuant to paragraph (b) of subdivision sixteen of section twenty-eight hundred seven-c of the public health law. The period of ineligibility shall begin the first day of a month during or after which assets have been transferred for less than fair market value, or the first day the otherwise eligible individual is receiving services for which medical

assistance coverage would be available based on an approved application for such care but for the provisions of subparagraph three of this paragraph, whichever is later, and which does not occur in any other periods of ineligibility under this paragraph.

(6) In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, shall be considered transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(7) In the case of a trust established by the individual, as determined pursuant to the regulations of the department, any payment, other than a payment to or for the benefit of the individual, from a revocable trust is considered to be a transfer of assets by the individual and any payment, other than to or for the benefit of the individual, from the portion of an irrevocable trust which, under any circumstance, could be made available to the individual is considered to be a transfer of assets by the individual and, further, the value of any portion of an irrevocable trust from which no payment could be made to the individual under any circumstances is considered to be a transfer of assets by the individual for purposes of this section as of the date of establishment of the trust, or, if later, the date on which the payment to the individual is foreclosed.

(f) The commissioner shall promulgate such rules and regulations as may be necessary to carry out the provisions of this subdivision.

* 6. a. The commissioner of health shall apply for a home and community-based services waiver pursuant to subdivision (c) of section nineteen hundred fifteen of the federal social security act in order to provide home and community-based services, not included under the medical assistance program.

b. A person eligible for participation in the waiver program shall:

(i) be twenty-one years of age or under;

(ii) be physically disabled, according to the federal supplemental security income program criteria, including but not limited to a person who is multiply disabled;

(iii) require the level of care provided by a nursing facility or by a

hospital;

(iv) be capable of being cared for in the community if provided with case management services and/or other services specified in paragraph f of this subdivision, in addition to other services provided under this title, as determined by the assessment required by paragraph d of this subdivision;

(v) meet the requirements of paragraph i of this subdivision; and

(vi) meet such other criteria as may be established by the commissioner as may be necessary to administer the provisions of this subdivision in an equitable manner.

c. Social services districts shall assess the eligibility of persons in accordance with the provisions of paragraphs b and d of this subdivision and shall refer persons who appear to meet the criteria set forth in such paragraphs to the commissioner of health for consideration for participation in the waiver program and final determinations of their eligibility for participation in the waiver program.

d. The commissioner of health shall designate persons to assess the eligibility of persons in accordance with paragraphs b and c of this subdivision under consideration for participation in the waiver program. Persons designated by such commissioner may include the person's physician, a representative of the social services district, a representative of the provider of a long term home health care program or certified home health agency and, where appropriate, the discharge coordinator of the hospital or nursing facility and such other persons as such commissioner deems appropriate. The assessment shall include, but need not be limited to, an evaluation of the medical, social, habilitation, and environmental needs of the person and shall serve as the basis for the development and provision of an appropriate plan of care for the person.

e. Prior to a person's participation in the waiver program, the social services district or the commissioner of health, as appropriate, shall undertake or arrange for the development of a written plan of care for the provision of services consistent with the level of care determined by the assessment, in accordance with criteria established by the

commissioner of health.

f. Home and community-based services which may be provided to persons specified in paragraph b of this subdivision include: (i) case management services; (ii) respite services; (iii) home adaptation; (iv) hospice and palliative care services; and (v) such other home and community-based services, other than room and board, as may be approved by the secretary of the federal department of health and human services.

g. Social services districts shall designate who may provide the home and community-based services identified in paragraph f of this subdivision, subject to the approval of the commissioner of health.

h. Notwithstanding any other provision of this chapter or any other law to the contrary, for purposes of determining medical assistance eligibility for persons specified in paragraph b of this subdivision, the income and resources of responsible relatives shall not be deemed available for as long as the person meets the criteria specified in this subdivision.

i. Before a person may participate in the waiver program specified in paragraph a of this subdivision, the department of health shall determine that the annual medical assistance expenditures for home and community-based services for all persons participating in the waiver program would not exceed the annual medical assistance expenditures for nursing facility and hospital services for all such persons had the waiver not been granted.

j. The commissioner shall review the plans of care and expenditure estimates determined by social services districts prior to the participation of any person in the waiver program.

k. This subdivision shall be effective only if, and as long as, federal financial participation is available for expenditures incurred under this subdivision.

* NB Repealed March 31, 2028

6-a. a. The commissioner of health shall apply for a nursing facility transition and diversion medicaid waiver pursuant to subdivision (c) of section nineteen hundred fifteen of the federal social security act in order to provide home and community based services to individuals who would otherwise be cared for in a nursing facility and who would be considered to be part of an aggregate group of individuals who, taken together, will be cared for at less cost in the community than they would have otherwise and to provide reimbursement for several home and community based services not presently included in the medical assistance program. The initial application shall provide for no less than five thousand persons to be eligible to participate in the waiver spread over the first three years and continue to increase thereafter.

b. A person eligible for participation in the nursing facility transition and diversion medicaid waiver program shall:

(i) be at least eighteen years of age;

(ii) be eligible for and in receipt of medicaid authorization for long term care services, including nursing facility services;

(iii) have resided in a nursing facility and/or have been assessed and determined to require the level of care provided by a nursing facility;

(iv) be capable of residing in the community if provided with services specified in paragraph f of this subdivision, in addition to other services provided under this title, as determined by the assessment required by paragraph d of this subdivision; and

(v) meet such other criteria as may be established by the commissioner of health as may be necessary to administer the provision of this subdivision in an equitable manner.

c. The department of health shall develop such waiver application in conjunction with independent living centers, representatives from disability and senior groups and such other interested parties as the department shall determine to be appropriate.

d. The commissioner of health shall contract with not-for-profit agencies around the state that have experience with providing community based services to individuals with disabilities, hereinafter referred to as regional resource development specialists, who shall be responsible

for initial contact with the prospective waiver participant, for assuring the waiver candidates have choice in selecting a service coordinator and other providers, and for assessing applicants including decisions for eligibility for participation in the waiver, which contain the original service plan and all subsequent revised service plans. Regional resource development specialists shall be responsible for approving service plans and the department of health shall provide technical assistance and oversight.

e. Prior to the person's participation in the waiver program, a service coordinator approved by the department of health shall undertake the development of a written plan of care for the provision of services consistent with the level of care determined by an initial assessment, in accordance with criteria established by the commissioner of health. Such plans shall set forth the type of services to be furnished, the amount, the frequency and duration of each service and the type of providers to furnish each service.

f. Nursing facility transition and diversion services which may be provided to persons specified in paragraph b of this subdivision shall be established and defined as part of the waiver application development process specified in paragraph c of this subdivision and may include: (i) case management services; (ii) personal care; (iii) independent living skills training; (iv) environmental accessibility adaptations; (v) costs of community transition services; (vi) assistive technology; (vii) adult day health; (viii) staff for safety assurance; (ix) non-medical support services needed to maintain independence; (x) respite services; and (xi) such other home and community based services as may be approved by the secretary of the federal department of health and human services.

g. The department of health shall designate who may provide the nursing facility transition and diversion services identified in paragraph f of this subdivision, subject to the approval of the commissioner of health.

h. Before a person may participate in the nursing transition waiver

program specified in this subdivision, the regional resource development specialists shall determine that:

- (i) the individual is at least eighteen years of age and eligible for and in receipt of medicaid authorization for long term care services, including nursing facility services; and

- (ii) the individual resides in a nursing facility and/or has been assessed and determined to require nursing facility care.

7. a. The commissioner of health shall apply for a home and community-based waiver, pursuant to subdivision (c) of section nineteen hundred fifteen of the federal social security act, in order to provide home and community-based services not presently included in the medical assistance program.

b. Persons eligible for participation in the waiver program shall:

- (i) be twenty-one years of age or under;

- (ii) have a developmental disability, as such term is defined in subdivision twenty-two of section 1.03 of the mental hygiene law;

- (iii) demonstrate complex health care needs, as defined in paragraph c of this subdivision;

- (iv) require the level of care provided by an intermediate care facility for the developmentally disabled;

- (v) not be hospitalized or receiving care in a nursing facility, an intermediate care facility for the developmentally disabled or any other institution;

- (vi) be capable of being cared for in the community if provided with case management services, respite services, home adaptation, and any other home and community-based services, other than room and board, as may be approved by the secretary of the federal department of health and human services, in addition to other services provided under this title, as determined by the assessment required by paragraph f of this subdivision;

- (vii) be ineligible for medical assistance because the income and resources of responsible relatives are deemed available to him or her, causing him or her to exceed the income or resource eligibility level for such assistance;

- (viii) be capable of being cared for at less cost in the community

than in an intermediate care facility for the developmentally disabled; and

(ix) meet such other criteria as may be established by the commissioner of health, in conjunction with the commissioner of the office for people with developmental disabilities, as may be necessary to administer the provisions of this subdivision in an equitable manner, including those criteria established pursuant to paragraph d of this subdivision.

c. For purposes of this subdivision, persons who "demonstrate complex health care needs", shall be defined as persons who require medical therapies that are designed to replace or compensate for a vital body function or avert immediate threat to life; that is, persons who rely on medical devices, nursing care, monitoring or prescribed medical therapy for the maintenance of life over a period expected to extend beyond twelve months.

d. The commissioner of health, in conjunction with the commissioner of the office for people with developmental disabilities, shall establish selection criteria to ensure that participants are those who are most in need and reflect an equitable geographic distribution. Such selection criteria shall include, but not be limited to, the imminent risk of institutionalization, the financial burden imposed upon the family as a result of the child's health care needs, and the level of stress within the family unit due to the unrelieved burden of caring for the child at home.

e. Social services districts, in consultation with the office for people with developmental disabilities, shall assess the eligibility of persons in accordance with the provisions of paragraph b of this subdivision, as well as the selection criteria established by the commissioner of health and the commissioner of the office for people with developmental disabilities as required by paragraph d of this subdivision.

f. The commissioner of health, in conjunction with the commissioner of the office for people with developmental disabilities, shall designate

persons to assess the eligibility of persons under consideration for participation in the waiver program. Persons designated by such commissioners may include the person's physician, a representative of the social services district, representative of the appropriate developmental disabilities services office and such other persons as the commissioners deem appropriate. The assessment shall include, but need not be limited to, an evaluation of the health, psycho-social, developmental, habilitation and environmental needs of the person and shall serve as the basis for the development and provision of an appropriate plan of care for such person.

g. Prior to a person's participation in the waiver program, the office for people with developmental disabilities shall undertake or arrange for the development of a written plan of care for the provision of services consistent with the level of care determined by the assessment, in accordance with criteria established by the commissioner of health, in consultation with the commissioner of the office for people with developmental disabilities. Such plan of care shall be reviewed by such commissioners prior to the provision of services pursuant to the waiver program.

h. Home and community-based services which may be provided to persons specified in paragraph b of this subdivision shall, in addition to those services otherwise authorized, include (i) case management services; (ii) respite services; (iii) home adaptation, and (iv) such other home and community-based services, other than room and board, as may be approved by the secretary of the federal department of health and human services.

i. The office for people with developmental disabilities shall designate who may provide the home and community-based services identified in paragraph h of this subdivision, subject to the approval of the commissioner of health.

j. Notwithstanding any other provision of this chapter other than subdivision six of this section or any other law to the contrary, for purposes of determining medical assistance eligibility for persons

specified in paragraph b of this subdivision, the income and resources of a responsible relative shall not be deemed available for as long as the person meets the criteria specified in this subdivision.

k. Before a person may participate in the waiver program specified in paragraph a of this subdivision, the office for people with developmental disabilities shall determine that there is a reasonable expectation that the annual medical assistance expenditures for such person under the waiver would not exceed the expenditures for care in an intermediate care facility for the developmentally disabled that would have been made had the waiver not been granted.

l. The commissioner of health, in conjunction with the commissioner of the office for people with developmental disabilities, shall review the plans of care and expenditure estimates prior to the participation of any person in the waiver program.

m. Within one year of federal waiver approval, and on an annual basis thereafter, until such time as the waiver program is fully implemented, the commissioner of health, in conjunction with the commissioner of the office for people with developmental disabilities, shall report on the status of the waiver program to the governor and the legislature. Such report shall specify the number of children participating in the waiver program, the geographic distribution of those so participating, health profiles, service costs and length of time the children have participated in the waiver program. The report shall also provide follow-up information on children who have withdrawn from the waiver program, including data on residential program placements.

n. This subdivision shall be effective only if, and as long as, federal financial participation is available for expenditures incurred under this subdivision.

7-a. a. The commissioner of health in consultation with the commissioner of developmental disabilities shall apply for a home and community-based waiver, pursuant to subdivision (c) of section nineteen hundred fifteen of the federal social security act, in order to provide

home and community-based services for a population of persons with developmental disabilities, as such term is defined in section 1.03 of the mental hygiene law.

b. Persons eligible for participation in the waiver program shall:

- (i) have a developmental disability as such term is defined in subdivision twenty-two of section 1.03 of the mental hygiene law;
- (ii) meet the level of care criteria provided by an intermediate care facility for the developmentally disabled;
- (iii) be eligible for Medicaid;
- (iv) live at home or in an individualized residential alternative, community residence or family care home, operated or licensed by the office for people with developmental disabilities;
- (v) be capable of being cared for in the community if provided with such services as respite, home adaptation, or other home and community-based services, other than room and board, as may be approved by the secretary of the federal department of health and human services, in addition to other services provided under this title, as determined by the assessment required by paragraph c of this subdivision;
- (vi) have a demonstrated need for home and community based waiver services; and
- (vii) meet such other criteria as may be established by the commissioner of health and the commissioner of developmental disabilities, as may be necessary to administer the provisions of this subdivision.

c. The commissioner of developmental disabilities shall assess the eligibility of persons enrolled, or seeking to enroll, in the waiver program. The assessment shall include, but need not be limited to, an evaluation of the health, psycho-social, developmental, habilitation and environmental needs of the person and shall serve as the basis for the development and provision of an appropriate person centered plan of care for such person.

d. The office for people with developmental disabilities shall undertake or arrange for the development of a written person centered plan of care for each person enrolled in the waiver. Such person

centered plan of care shall describe the provision of home and community based waiver services consistent with the assessment for each person.

e. The office for people with developmental disabilities shall review the person centered plan of care and authorize those home and community based services to be included in the person centered plan of care, taking into account the person's assessed needs, valued outcomes and available resources.

f. The commissioners of developmental disabilities and health shall determine quality standards for organizations providing services under such waiver and shall authorize organizations that meet such standards to provide such services.

g. The commissioner of developmental disabilities or health may promulgate rules and regulations as necessary to effectuate the provisions of this section.

h. This subdivision shall be effective only if, and as long as, federal financial participation is available for expenditures incurred under this subdivision.

7-b. Services and needs assessment. The assessment completed pursuant to subdivision seven-a of this section shall be based upon a valid and reliable assessment tool. The assessment shall also include an evaluation of the individual's home environment, including but not limited to, the ability of family and/or caregivers to provide supports outside of those within the waiver, including but not limited to, activities of daily living.

7-c. The commissioner of health in consultation with the commissioner of developmental disabilities is authorized to submit the appropriate waivers, including, but not limited to, those authorized pursuant to section eleven hundred fifteen of the federal social security act, in order to achieve the purposes of high-quality and integrated care and services for a population of persons with developmental disabilities, as such term is defined in section 1.03 of the mental hygiene law. Such

waiver applications shall be executed consistent with subdivisions seven, seven-a, and seven-b of this section, to the extent those sections comply with the requirements of section eleven hundred fifteen of the federal social security act. Nothing in subdivision seven of this section shall prevent the commissioner of health, in consultation with the commissioner of developmental disabilities, from submitting waiver applications expanding eligibility under such waivers to children under eighteen years of age who are eligible for medical assistance.

8. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, income and resources which are otherwise exempt from consideration in determining a person's eligibility for medical care, services and supplies available under this title, shall be considered available for the payment or part payment of the costs of such medical care, services and supplies as required by federal law and regulations.

9. a. The commissioner shall apply for a general waiver, pursuant to subdivision (c) of section nineteen hundred fifteen of the federal social security act, in order to provide medical assistance for persons specified in paragraphs b and c of this subdivision and reimbursement for several home and community-based services not presently included in the medical assistance program. If granted the general waiver, the commissioner may authorize such persons to receive services under the general waiver to the extent funds are appropriated for transfer to the department for the state share of medical assistance payments for such waiver services from the budget of the office of mental health.

b. Persons eligible for inclusion in the general waiver shall:

- (i) be under twenty-one years of age;
- (ii) have a mental illness, as such term is defined in subdivision twenty of section 1.03 of the mental hygiene law;
- (iii) demonstrate complex health or mental health care needs, as defined in paragraph d of this subdivision;
- (iv) require the level of care provided by a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law which provides intermediate or long-term care and treatment, or within the past six

months have been hospitalized for at least thirty consecutive days, or have resided in such a hospital for at least one hundred eighty consecutive days;

(v) be capable of being cared for in the community if provided with case management services, clinical interventions, crisis services, social training, rehabilitation services, counseling, respite services, medication therapy, partial hospitalization, environmental modifications, educational and related services, and/or medical social services, in addition to other services, as determined by the assessment required by paragraph g of this subdivision and included in the written plan of care developed pursuant to paragraph h of this subdivision;

(vi) be eligible or, if discharged, would be eligible for medical assistance, or are ineligible for medical assistance because the income and resources of responsible relatives are or, if discharged, would be deemed available to such persons causing them to exceed the income or resource eligibility level for such assistance;

(vii) be capable of being cared for at less cost in the community than in a hospital, as defined in subdivision ten of section 1.03 of the mental hygiene law; and

(viii) meet such other criteria as may be established by the commissioner of mental health, in conjunction with the commissioner, as may be necessary to administer the provisions of this subdivision in an equitable manner, including those criteria established pursuant to paragraph e of this subdivision.

c. Persons eligible for inclusion in the general waiver shall meet all the requirements set forth in subparagraphs (i) through (viii) of paragraph b of this subdivision; and shall be eligible for, shall have applied for, or shall reside in an institutional placement including a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law which provides intermediate or long-term care and treatment.

d. For purposes of this subdivision, persons who "demonstrate complex health or mental health care needs", shall be defined as persons who require medical or mental health therapies, care or treatments that are designed to replace or compensate for a vital functional limitation or to avert an immediate threat to life; that is, persons who rely on

mental health care, nursing care, monitoring, or prescribed medical or mental health therapy for the maintenance of quality of life over a period expected to extend beyond twelve months.

e. The commissioner of mental health, in conjunction with the commissioner, shall establish selection criteria to ensure that participants are those who are most in need. Such selection criteria shall include, but not be limited to: the need for continued hospitalization or the risk of hospitalization; the financial burden imposed upon the family, or which would be imposed upon the family if an institutionalized participant were to be discharged, as a result of the child's health or mental health care needs; and the level of stress or the anticipated level of stress within the family unit due to the unrelieved burden of caring for the child at home.

f. Social services districts, in conjunction with the office of mental health and the local governmental unit as defined in section 41.03 of the mental hygiene law, shall determine the eligibility of persons in accordance with the provisions of paragraphs b and c of this subdivision, as well as the selection criteria established by the commissioner and the commissioner of mental health as required by paragraph e of this subdivision.

g. The commissioner of mental health, in conjunction with the commissioner, shall designate persons to undertake an assessment to determine the eligibility of persons under consideration for inclusion in the general waiver. Persons designated by such commissioners may include the potentially eligible person's physician, a representative of the local governmental unit as defined in section 41.03 of the mental hygiene law, a representative of the appropriate hospital or regional office of the office of mental health, and such other persons as the commissioners deem appropriate. The assessment shall include, but not be limited to, an evaluation of the mental health, health, psycho-social, rehabilitation and environmental needs of the person, and shall serve as the basis for the development and provision of an appropriate plan of care for such person.

h. Prior to a person's inclusion in the general waiver, the office of mental health and the local governmental unit as defined in section 41.03 of the mental hygiene law, shall undertake or arrange for the development of a written plan of care, including identification of service providers if known, for the provision of services in consultation with the individual and their family whenever clinically appropriate, consistent with the level of care determined by the assessment, in accordance with criteria established by the commissioner of mental health, in consultation with the commissioner. If a provider of services is identified in a written plan of care, such provider shall be designated pursuant to paragraph j of this subdivision. Such plan of care shall be reviewed by such commissioners and approved by the commissioner of mental health prior to the provision of services pursuant to the general waiver.

i. Home and community-based services which may be provided to persons specified in paragraphs b and c of this subdivision shall, in addition to those services otherwise authorized, include but are not limited to (i) case management services; (ii) clinical interventions; (iii) crisis services; (iv) social training; (v) rehabilitation services; (vi) counseling; (vii) respite services; (viii) medication therapy; (ix) partial hospitalization; (x) environmental modifications; (xi) educational and related services; (xii) medical social services; and other services included in the written plan of care developed pursuant to paragraph h of this subdivision.

j. The office of mental health, in conjunction with the social services district and the local governmental unit, shall designate who may provide the home and community-based services identified in paragraph i of this subdivision.

k. Notwithstanding any provision of this chapter other than subdivision six or seven of this section, or any other law to the contrary, for purposes of determining medical assistance eligibility for persons specified in paragraphs b and c of this subdivision, the income and resources of a responsible relative shall not be deemed available for as long as the person meets the criteria specified in this

subdivision.

l. Before a person may participate in the general waiver specified in paragraph a of this subdivision, the social services district and the office of mental health shall determine that there is a reasonable expectation that the annual medical assistance expenditures for such person under the waiver would not exceed the expenditures for care in a hospital, as defined in subdivision ten of section 1.03 of the mental hygiene law, that would have been made had the waiver not been granted.

m. The commissioner, in conjunction with the commissioner of mental health, shall review the expenditure estimates determined by social services districts and the office of mental health, prior to the inclusion of any person in the general waiver.

n. Within one year of federal waiver approval, and on an annual basis thereafter, until such time as the waiver is fully implemented, the commissioner of mental health, in conjunction with the commissioner, shall report on the status of the general waiver to the governor, the legislature, including the respective chairpersons of the senate and assembly committees of mental health and the chairs of the senate finance and assembly ways and means committees and the director of the division of the budget. Such report shall specify the number of children included in the waiver, the geographic distribution of those included, health and mental health profiles, utilization and costs of services by region including costs avoided in residential treatment facilities and inpatient facilities operated by the office of mental health, the length of time the children have participated in the waiver and regional information on the status of waiting lists for waiver services and for services in residential settings, where appropriate. The report shall also provide follow-up information on children who have withdrawn from the waiver, including data on residential program placements.

o. This subdivision shall be effective if, and as long as, federal financial participation is available for expenditures incurred under this subdivision.

p. Nothing herein shall be construed to create an entitlement to services under the approved general waiver implemented by the commissioner in accordance with this subdivision.

11. The commissioner of health shall, consistent with this title, make any necessary amendments to the state plan for medical assistance submitted pursuant to section three hundred sixty-three-a of this title, in order to ensure federal financial participation in expenditures under subparagraphs twelve and thirteen of paragraph (a) of subdivision one of this section. Notwithstanding any other provision of law to the contrary, medical assistance under subparagraphs twelve and thirteen of paragraph (a) of subdivision one of this section shall be provided only to the extent permitted under federal law, if, for so long as, and to the extent that federal financial participation is available therefor.

12. (a) Notwithstanding any provision of law to the contrary, the commissioner of health, in consultation with the office of children and family services, shall develop and submit applications for waivers pursuant to section nineteen hundred fifteen of the federal social security act as may be necessary to provide medical assistance, including services not presently included in the medical assistance program, for persons described in paragraph (b) of this subdivision. If granted such waivers, the commissioner of health, on the advice and recommendation of the commissioner of children and family services, may authorize such persons to receive such assistance to the extent funds are appropriated therefor.

(b) Persons eligible for inclusion in the waiver program established by this subdivision shall be residents of New York state under the age of twenty-one years, who are eligible for care in a medical institution, who have had the responsibility for their care and placement transferred to the local commissioner of a social services district or to the office of children and family services as adjudicated juvenile delinquents under article three of the family court act, where placement is in a non-secure setting, and who:

(i) have a diagnosis of a mental disorder under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders;

(ii) have a diagnosis of a developmental disability as defined in

section 1.03 of the mental hygiene law; or

(iii) have a physical disability.

(c) Services which may be provided to persons specified in paragraph (b) of this subdivision, in addition to services otherwise authorized, may include but are not limited to:

(i) services that will permit children to be better served, prevent institutionalization, and allow utilization at lower-levels of institutional care;

(ii) case management services;

(iii) respite services;

(iv) medical social services;

(v) nutritional counseling;

(vi) respiratory therapy;

(vii) home adaptation and/or environmental modifications;

(viii) clinical interventions;

(ix) crisis services;

(x) social training;

(xi) habilitation and rehabilitation services;

(xii) counseling;

(xiii) medication therapy;

(xiv) partial hospitalization;

(xv) educational and related services; and

(xvi) other services included in the written plan of care.

(d) Notwithstanding any provision of this chapter or any other law to the contrary, for purposes of determining medical assistance eligibility for persons specified in paragraph (b) of this subdivision, the income and resources of a legally responsible relative shall not be deemed available for as long as the person meets the criteria specified in this subdivision; provided, however, that such income shall continue to be deemed unavailable should responsibility for the care and placement of the person be returned to his or her parent or other legally responsible person.

(e) Before a person may participate in the waiver program established by this subdivision, the social services district that is fiscally responsible for the person shall determine that there is a reasonable expectation that annual medical assistance expenditures for such person will not exceed federal requirements.

(f) The eligibility and benefits authorized by this subdivision shall be applicable if, and as long as, federal financial participation is available for expenditures incurred under this subdivision. The eligibility and benefits authorized by this subdivision shall not apply unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of services provided pursuant to this subdivision.

(g) Nothing in this subdivision shall be construed to create an entitlement to services under the waiver program established by this subdivision.

(h) A person participating in the waiver program established by this subdivision may continue participation in the program until it is no longer consistent with the plan of care, or until age twenty-one, whichever occurs earlier, notwithstanding the person's status as having been discharged from the care and placement of the local commissioner of a social services district or the commissioner of children and family services, including adoption or participation in the kinship guardianship assistance program under title ten of article six of this chapter.

13. The commissioner of health, in consultation with the commissioner of the office of children and family services, shall make any available amendments to the state plan for medical assistance submitted pursuant to section three hundred sixty-three-a of this title, or, if an amendment is not possible, develop and submit an application for any waiver under the federal social security act that may be available to provide medical assistance for those children receiving kinship guardianship assistance payments under title ten of article six of this chapter who are not automatically eligible for such medical assistance under title IV-E of the federal social security act.

14. The commissioner of health may make any available amendments to the state plan for medical assistance submitted pursuant to section three hundred sixty-three-a of this title, or, if an amendment is not possible, develop and submit an application for any waiver or approval under the federal social security act that may be necessary to disregard or exempt an amount of income, for the purpose of assisting with housing

costs, for individuals receiving coverage of nursing facility services under this title, other than short-term rehabilitation services, and for individuals in receipt of medical assistance while in an adult home, as defined in subdivision twenty-five of section two of this chapter, who: are (i) discharged to the community; and (ii) if eligible, enrolled or required to enroll and have initiated the process of enrolling in a plan certified pursuant to section forty-four hundred three-f of the public health law; and (iii) do not meet the criteria to be considered an "institutionalized spouse" for purposes of section three hundred sixty-six-c of this title.

15. The commissioner may contract with one or more entities to engage in education, outreach services, and facilitated enrollment activities for aged, blind, and disabled persons who may be eligible for coverage under this title.

16. (a) The commissioner of health is authorized to submit the appropriate waivers and/or any other required requests for federal approval, including but not limited to, those authorized in section eleven hundred fifteen of the federal social security act, in order to establish expanded medical assistance eligibility for working disabled individuals. Such waiver applications shall be executed consistent with paragraphs (b), (c), (d) and (e) of this subdivision, to the extent those sections comply with the requirements of section eleven hundred fifteen of the federal social security act. Notwithstanding subparagraphs five and six of paragraph (c) of subdivision one of this section and subdivision twelve of section three hundred sixty-seven-a of this title, or any other provision of law to the contrary, if granted such waiver, the commissioner of health may authorize eligible persons to receive medical assistance pursuant to the waiver if, for so long as, and to the extent that, financial participation is available therefor. The waiver application shall provide for thirty thousand persons to be eligible to participate in such waiver.

(b) Individuals eligible for participation in such waiver shall:

(i) be a disabled individual, defined as having a medically determinable impairment of sufficient severity and duration to qualify for benefits under Titles II or XVI of the social security act;

(ii) be at least sixteen years of age;

(iii) be otherwise eligible for medical assistance benefits, but for earnings and/or resources in excess of the allowable limit;

(iv) have net available income, determined in accordance with subdivision two of this section, that does not exceed two thousand two hundred fifty percent of the applicable federal poverty line, as defined and updated by the United States department of health and human services;

(v) have resources, as defined in paragraph (e) of subdivision two of section three hundred sixty-six-c of this title, other than retirement accounts, that do not exceed three hundred thousand dollars;

(vi) contribute to the cost of medical assistance provided pursuant to this paragraph in accordance with paragraph (d) of this subdivision; and

(vii) meet such other criteria as may be established by the commissioner as may be necessary to administer the provisions of this subdivision in an equitable manner.

(c) An individual at least sixteen years of age who: is employed; ceases to be eligible for participation in such waiver pursuant to paragraph (b) of this subdivision because the person, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be certified as disabled under the social security act; continues to have a severe medically determinable impairment, to be determined in accordance with applicable federal regulations; and contributes to the cost of medical assistance provided pursuant to this paragraph in accordance with paragraph (d) of this subdivision, shall be eligible for participation in such waiver. For purposes of this paragraph, a person is considered to be employed if the person is earning at least the applicable minimum wage under section six of the federal fair labor standards act and working at least forty hours per month.

(d) Prior to receiving medical assistance pursuant to such waiver, a person whose net available income is greater than or equal to two hundred fifty percent of the applicable federal poverty line shall pay a monthly premium, in accordance with a procedure to be established by the commissioner, provided that no enrollee shall pay a monthly premium that exceeds exceed eight and one-half percent of the enrollee's monthly income. The amount of such premium for a person whose net available

income is greater than or equal to two hundred fifty percent of the applicable federal poverty line, but less than three hundred percent of the applicable federal poverty line shall be three hundred and forty-seven dollars but shall not exceed four percent of the enrollee's monthly income. The amount of such premium for a person whose net available income is greater than or equal to three hundred percent of the applicable federal poverty line, but less than four hundred percent of the applicable federal poverty line shall be five hundred eighteen dollars but shall not exceed six percent of the enrollee's monthly income. The amount of such premium for a person whose net available income is greater than or equal to four hundred percent of the applicable federal poverty line, but less than five hundred percent of the applicable federal poverty line shall be seven hundred and seventy-nine dollars but shall not exceed eight and one-half percent of the enrollee's monthly income. The amount of such premium for a person whose net available income is equal to or greater than five hundred percent of the applicable federal poverty line shall be one thousand thirty-three dollars but shall not exceed eight and one-half percent of the enrollee's monthly income. No premium shall be required from a person whose net available income is less than two hundred fifty percent of the applicable federal poverty line.

(e) Notwithstanding any other provision of this section or any other law to the contrary, for purposes of determining medical assistance eligibility for persons specified in paragraph (b) or (c) of this subdivision, the income and resources of responsible relatives shall not be deemed available for as long as the person meets the criteria specified in this subdivision.

§ 366-a. Applications for assistance; investigations; reconsideration.

1. Any person requesting medical assistance may make application therefor by a written application to the social services official of the county in which the applicant resides or is found or to the department of health or its agent; a phone application; or an on-line application. Notwithstanding any provision of law to the contrary, an in-person interview with the applicant or with the person who made application on his or her behalf shall not be required as part of a determination of

initial or continuing eligibility pursuant to this title.

1-a. Every person making application for medical assistance, and every person on whose behalf an application is made, shall, if interested, be given the New York state department of health model health care proxy form by the person taking the application, except where doing so would impede the immediate provision of health care services.

2. (a) Upon receipt of such application, the appropriate social services official, or the department of health or its agent shall verify the eligibility of such applicant. In accordance with the regulations of the department of health, it shall be the responsibility of the applicant to provide information and documentation necessary for the determination of initial and ongoing eligibility for medical assistance. If an applicant or recipient is unable to provide necessary documentation, the social services official or the department of health or its agent shall promptly cause an investigation to be made. Where an investigation is necessary, sources of information other than public records will be consulted only with permission of the applicant or recipient. In the event that such permission is not granted by the applicant or recipient, or necessary documentation cannot be obtained, the social services official or the department of health or its agent may suspend or deny medical assistance until such time as it may be satisfied as to the applicant's or recipient's eligibility therefor.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, an applicant or recipient may attest to the amount of his or her accumulated resources, unless such applicant or recipient is seeking medical assistance payment for long term care services. For purposes of this paragraph, long term care services shall mean care, treatment, maintenance, and services described in paragraph (b) of subdivision 1 of section three hundred sixty-seven-f of this title, with the exception of short term rehabilitation, as defined by the commissioner of health.

(c) Notwithstanding the provisions of paragraph (a) of this subdivision, an applicant or recipient providing written documentation of income eligibility of a child for free or reduced breakfast or lunch through the school meal program certified by the child's school shall

meet the evidentiary requirement necessary to document income.

* (d) Notwithstanding the provisions of paragraph (a) of this subdivision, an applicant or recipient whose eligibility under this title is determined without regard to the amount of his or her accumulated resources may attest to the amount of interest income generated by such resources if the amount of such interest income is expected to be immaterial to medical assistance eligibility, as determined by the commissioner of health. In the event there is an inconsistency between the information reported by the applicant or recipient and any information obtained by the commissioner of health from other sources and such inconsistency is material to medical assistance eligibility, the commissioner of health shall request that the applicant or recipient provide adequate documentation to verify his or her interest income.

* NB There are 2 par (d)'s

* (d) The commissioner of health may verify the accuracy of the information provided by the applicant or recipient pursuant to paragraphs (b) and (c) of this subdivision, by matching it against information to which the commissioner of health has access, including under subdivision eight of this section. In the event there is an inconsistency between the information reported by the applicant or recipient and any information obtained by the commissioner of health from other sources and such inconsistency is material to medical assistance eligibility, the commissioner of health shall request that the applicant or recipient provide adequate documentation to verify his or her resources.

* NB There are 2 par (d)'s

3. Upon the receipt of such application, and after the completion of any investigation that shall be deemed necessary, the appropriate social services official or the department of health or its agent shall

(a) decide whether the applicant is eligible for and should receive medical assistance, the amount thereof and the date on which it shall begin, which shall be the date of the application or, subject to applicable department regulations, such earlier or later date as may be deemed reasonable;

(b) notify the applicant in writing of the decision, and where such

applicant is found eligible, provide a tamper resistant identification card containing a photo image of the applicant for use in securing medical assistance under this title provided, however, that an identification card need not contain a photo image of a person other than an adult member of an eligible household or a single-person eligible household. The department is not required to provide, but shall seek practical methods for providing, a card with such picture to a person when such person is homebound or is a resident of a residential health care facility, or an in-patient psychiatric facility, or is expected to remain hospitalized for an extended period. The commissioner shall have the authority to define categories of recipients who are not required to have a photo identification card where such card would be limited, unnecessary or impracticable.

(c) with respect to a person determined eligible for assistance under this title by the federal social security administration under an agreement between the department and the secretary of health, education and welfare pursuant to section three hundred sixty-three-b of this title issue a medical assistance identification card which shall be valid for periods determined by the local social services official, but not to exceed six months.

4. Every applicant or recipient shall promptly advise the public welfare district of any change in his financial condition or income, number of wage earners and members in the family unit on such forms and in such manner as the department by regulation may prescribe. In the event that any applicant or recipient shall no longer be eligible for medical assistance, he shall promptly return his identification card issued pursuant to the provisions of this article to the public welfare district.

5. (a) All continuing assistance under this title shall be reconsidered from time to time, or as frequently as may be required by the regulations of the department. After such further investigation as the social services official may deem necessary or the department may require, the assistance may be modified or withdrawn if it is found that the recipient's circumstances have changed sufficiently to warrant such action. The assistance may be cancelled for cause, and payment thereof

may be suspended for cause for such periods as may be deemed necessary, subject to review by the department as provided in section twenty-two of this chapter.

(b) The commissioner shall develop a simplified statewide recertification form for use in redetermining eligibility under this title. The form may include requests only for such information that is:

(i) reasonably necessary to determine continued eligibility for medical assistance under this title; and

(ii) subject to change since the date of the recipient's initial application.

(c) The regulations required by paragraph (a) of this subdivision shall provide that:

(i) the redetermination of eligibility will be made based on reliable information possessed or available to the department of health or its agent, including information accessed from databases pursuant to subdivision eight of this section;

(ii) if the department of health or its agent is unable to renew eligibility based on available information, the recipient will be requested to supply any such information as is necessary to determine continued eligibility for medical assistance under this title; and

(iii) for persons whose medical assistance eligibility is based on modified adjusted gross income, eligibility must be renewed at least once every twelve months, unless the department of health or its agent receives information about a change in a recipient's circumstances that may affect eligibility.

* (d) An in-person interview with the recipient shall not automatically be required as part of a redetermination of eligibility pursuant to this subdivision unless the department of health determines otherwise.

* NB There are 2 par (d)'s

* (d) The commissioner of health shall verify the accuracy of the information provided by an applicant or recipient by matching it against information to which the commissioner of health has access, including under subdivision eight of this section. In the event the information reported by the recipient is not reasonably compatible with any information obtained by the commissioner of health from other sources and such incompatibility is material to medical assistance eligibility,

the commissioner of health shall request that the recipient provide adequate documentation to verify his or her place of residence or income, as applicable. In addition to the documentation of residence and income authorized by this paragraph, the commissioner of health is authorized to periodically require a reasonable sample of recipients to provide documentation of residence and income at recertification. The commissioner of health shall consult with the medicaid inspector general regarding income and residence verification practices and procedures necessary to maintain program integrity and deter fraud and abuse.

* NB There are 2 par (d)'s

6. Notwithstanding any other provisions of this chapter or other law, the investigations, decisions and actions required to be made or taken by a public welfare official pursuant to this section shall be made or taken only by the chief executive officer of the public welfare department of a public welfare district, or by an employee of such welfare department designated by such chief executive officer.

7. Local social services districts shall be authorized, with the approval of the department, to station local social services employees at federal social security offices for the purpose of providing information and referral services relating to medical assistance to eligible persons.

8. (a) Notwithstanding subdivisions two and five of this section, information concerning income and resources of applicants for and recipients of medical assistance may be verified by matching client information with information contained in the wage reporting system established by section one hundred seventy-one-a of the tax law and in similar systems operating in other geographically contiguous states, by means of an income verification performed pursuant to a memorandum of understanding with the department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-b of the tax law, and, to the extent required by federal law, with information contained in the non-wage income file maintained by the United States internal revenue service, in the beneficiary data exchange maintained by the United States department of health and human services, and in the

unemployment insurance benefits file. Such matching shall provide for procedures which document significant inconsistent results of matching activities. Nothing in this section shall be construed to prohibit activities the department reasonably believes necessary to conform with federal requirements under section one thousand one hundred thirty-seven of the social security act.

(b) Any verification response by the department of taxation and finance pursuant to paragraph (a) of this subdivision shall not be a public record and shall not be released except pursuant to this paragraph. Information disclosed pursuant to this paragraph shall be limited to information necessary for verification. Information so disclosed shall be kept confidential by the party receiving such information. Such information shall be expunged within a reasonable time to be determined by the commissioner and the department of taxation and finance.

9. (a) Every applicant for or recipient of medical assistance who has dependent children shall be informed in writing at the time of application and at the time of any action affecting his or her receipt of such assistance of the availability of:

- (i) medical assistance without cash assistance under this title;
- (ii) transitional medical assistance under paragraphs (a), (b) and (c) of subdivision four of section three hundred sixty-six of this title;
- (iii) the expanded eligibility provisions for pregnant women and children under paragraphs (m), (n), (o), (p) and (q), (s) and (t) of subdivision four of section three hundred sixty-six of this title;
- (iv) medical assistance for aged, blind or disabled persons under subdivision one of section three hundred sixty-six of this title;
- (v) family health plus under section three hundred sixty-nine-ee of this article; and,
- (vi) child health plus under title one-A of article twenty-five of the public health law.

(b) Every applicant for or recipient of medical assistance who has no dependent children shall be informed in writing at the time of application and at the time of any action affecting his or her receipt of such assistance of the availability of:

- (i) medical assistance without cash assistance under this title;

(ii) the expanded eligibility provisions for pregnant women under paragraphs (m) and (o) of subdivision four of section three hundred sixty-six of this title;

(iii) medical assistance for aged, blind or disabled persons under subdivision one of section three hundred sixty-six of this title; and,

(iv) family health plus under section three hundred sixty-nine-ee of this article.

(10) As a condition for the provision of medical assistance for nursing facility services, the application of an individual for such assistance, including any recertification of eligibility for such assistance, shall disclose a description of any interest the individual or community spouse has in an annuity or similar financial instrument, regardless of whether the annuity is irrevocable or is treated as an asset. Such application or recertification form shall include a statement that the state of New York becomes a remainder beneficiary under such annuity or similar financial instrument by virtue of the provision of such medical assistance.

11. (a) Notwithstanding any inconsistent provision of law, rule or regulation, the commissioner of health is authorized to (i) establish standards and procedures for express lane enrollment and renewal implemented in accordance with section 1902(e)(13) of the federal social security act, including but not limited to reliance on a finding made by an express lane agency, as defined in section 1902(e)(13)(F) and (H) of the federal social security act, to determine whether a child meets one or more of the eligibility criteria for medical assistance; (ii) specify such standards and procedures in the medical assistance state plan established under title XIX of the federal social security act; and (iii) waive any information and documentation requirements set forth in this section necessary to implement express lane eligibility; provided, however, information and documentation required pursuant to section one hundred twenty-two of this chapter may not be waived.

(b) Subject to federal approval, such standards and procedures shall specify that information and documentation regarding citizenship and immigration status collected by an express lane agency and provided to the commissioner for the purpose of express lane eligibility may be used to satisfy the requirements of section one hundred twenty-two of this

chapter.

(c) Such standards and procedures shall also include a process for determining enrollment error rates and implementing corrective actions as required by section 1902(e)(13)(E) of the federal social security act.

(d) For purposes of a medical assistance eligibility determination made in accordance with this subdivision, a child shall be deemed to satisfy the income eligibility criteria for medical assistance if an express lane agency, as defined in section 1902(e)(13)(F) and (H) of the federal social security act and specified in the standards and procedures established pursuant to paragraph (a) of this subdivision, has determined that: the child's family has income that does not exceed a screening threshold amount, as determined by the commissioner of health, equal to a percentage of the federal poverty line (as defined and annually revised by the United States department of health and human services) that exceeds by thirty percentage points the highest income eligibility level applicable to a family of the same size under the medical assistance program.

12. The commissioner shall develop expedited procedures for determining medical assistance eligibility for any medical assistance applicant with an immediate need for personal care or consumer directed personal assistance services pursuant to paragraph (e) of subdivision two of section three hundred sixty-five-a of this title or section three hundred sixty-five-f of this title, respectively. Such procedures shall require that a final eligibility determination be made within seven days of the date of a complete medical assistance application.

§ 366-b. Penalties for fraudulent practices. 1. Any person who knowingly makes a false statement or representation, or who by deliberate concealment of any material fact, or by impersonation or other fraudulent device, obtains or attempts to obtain or aids or abets any person to obtain medical assistance to which he is not entitled, shall be guilty of a class A misdemeanor, unless such act constitutes a violation of a provision of the penal law of the state of New York, in which case he shall be punished in accordance with the penalties fixed

by such law.

2. Any person who, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise, or knowingly submits false information for the purpose of obtaining greater compensation than that to which he is legally entitled for furnishing services or merchandise, or knowingly submits false information for the purpose of obtaining authorization for furnishing services or merchandise under this title, shall be guilty of a class A misdemeanor, unless such act constitutes a violation of a provision of the penal law of the state of New York, in which case he shall be punished in accordance with the penalties fixed by such law.

§ 366-c. Treatment of income and resources of institutionalized persons. 1. Notwithstanding any other provision of law to the contrary, in determining the eligibility for medical assistance of a person defined as an institutionalized spouse, the income and resources of such person and the person's community spouse shall be treated as provided in this section.

2. (a) For purposes of this section an "institutionalized spouse" is a person (i) who is in a medical institution or nursing facility and expected to remain in such facility or institution for at least thirty consecutive days; or (ii) who is receiving care, services and supplies pursuant to a waiver pursuant to subsection (c) of section nineteen hundred fifteen of the federal social security act, or successor to such waiver, or is receiving care, services and supplies in a managed long-term care plan pursuant to section eleven hundred fifteen of the social security act; and (iii) who is married to a person who is not in a medical institution or nursing facility or is not receiving waiver services described in subparagraph (ii) of this paragraph; provided, however, that medical assistance shall be furnished pursuant to this paragraph only if, for so long as, and to the extent that federal financial participation is available therefor. The commissioner of health shall make any amendments to the state plan for medical assistance, or apply for any waiver or approval under the federal social

security act that are necessary to carry out the provisions of this paragraph.

(b) For purposes of this section, a "community spouse" is a person who is the spouse of an "institutionalized spouse".

(c) For the purposes of this section, "spousal share" means an amount equal to one-half of the total value of the resources of the community spouse and the institutionalized spouse, as of the beginning of the first continuous period of institutionalization beginning on or after the thirtieth day of September, nineteen hundred eighty-nine, to the extent that either, or both, have an ownership interest as of the date of the continuous period of institutionalization of the institutionalized spouse.

(d) For the purposes of this section, "community spouse resource allowance" means the amount, if any, by which the greatest of the following amounts exceeds the total value of the resources otherwise available to the community spouse:

(i) (A) prior to January first, nineteen hundred ninety-five, sixty thousand dollars, which shall be increased annually by the same percentage as the percentage increase in the federal consumer price index;

(B) on and after January first, nineteen hundred ninety-five through June thirtieth, nineteen hundred ninety-nine, seventy-four thousand eight hundred twenty dollars or such greater amount as may be required under federal law;

(ii) the lesser of sixty thousand dollars which shall be increased annually by the same percentage as the percentage increase in the federal consumer price index or the spousal share; or

(iii) the amount established for support of the community spouse pursuant to a fair hearing under this section; or

(iv) the amount transferred pursuant to court order for the support of the community spouse.

(e) For purposes of this section, "resources" do not include resources excluded in determining eligibility for benefits under title XVI of the federal social security act, as defined by the commissioner consistent with federal law.

(f) For purposes of this section, "family member" includes only a dependent or minor child, a dependent parent, or a dependent sibling of

the institutionalized spouse or the community spouse, who resides with the community spouse.

(g) For purposes of this section, "community spouse monthly income allowance" is the amount by which the minimum monthly maintenance needs allowance for the community spouse exceeds the monthly income otherwise available to the community spouse unless a greater amount is established pursuant to a fair hearing under this section or pursuant to court order for the support of the community spouse.

(h) For purposes of this section, "minimum monthly maintenance needs allowance" is an amount equal to one-twelfth of the applicable percentage of the federal income official poverty line for a family of two, plus an excess shelter allowance, provided however, such amount shall not be less than one thousand five hundred dollars per month, nor exceed one thousand five hundred dollars (as adjusted in the discretion of the commissioner for changes in the federal consumer price index for calendar years after nineteen hundred eighty-nine) per month.

(i) For purposes of this section, "family allowance for each family member" is an amount equal to the one-third times one-twelfth of the applicable percentage of the federal income official poverty line to a family of two, less the monthly income otherwise available to the family member.

(j) For purposes of this section, the "applicable percentage of the federal income official poverty line" shall be one hundred twenty-two percent as of September thirtieth, nineteen hundred eighty-nine; one hundred thirty-three percent as of July first, nineteen hundred ninety-one and one hundred fifty percent on and after July first, nineteen hundred ninety-two.

(k) For purposes of this section, the "excess shelter allowance" shall be the amount by which the community spouse's rent, mortgage, or condominium or cooperative maintenance fees, taxes and insurance, and utilities exceed thirty percent of one-twelfth of the applicable percentage of the federal income official poverty line for two persons.

3. Unless established by a preponderance of the evidence to the contrary, the following presumptions shall apply in determining the availability of income to an institutionalized spouse in determining eligibility for medical assistance.

(a) During any month in which an institutionalized spouse is in the institution or facility, no income of the community spouse shall be considered available to the institutionalized spouse except as provided in this subdivision; and

(b) Income solely in the name of the institutionalized spouse or the community spouse shall be considered available only to that spouse; and

(c) Income in the names of the institutionalized spouse and the community spouse shall be considered available one-half to each spouse; and

(d) Income in the names of the institutionalized spouse or the community spouse, or both, and also in the name of another person or persons, shall be considered available to each spouse in proportion to the spouse's interest or, if in the names of both spouses and no share is specified, one-half of the joint interest shall be considered available to each spouse; and

(e) (i) Income from a trust shall be considered available to each spouse in accordance with the provisions of the trust instrument, or, in absence of a specific trust provision allocating income, in accordance with the provisions of paragraphs (a) through (d) of this subdivision; and

(ii) Additionally, income from a trust shall be attributed in accordance with the provisions of this title and title XIX of the federal social security act; and

(f) Income in which there is no instrument establishing ownership shall be considered to be available one-half to the institutionalized spouse and one-half to the community spouse.

* 4. In determining the amount of income to be applied toward the cost of medical care, services and supplies of the institutionalized spouse, after the institutionalized spouse has been determined eligible for medical assistance, the following items shall be deducted from the monthly income of the institutionalized spouse in the following order:

(a) a personal needs allowance;

(b) a community spouse monthly income allowance;

(c) a family allowance for each family member;

(d) any expenses incurred for medical care, services or supplies and remedial care for the institutionalized spouse;

provided, however, that, to the extent required by federal law, the

terms of this subdivision shall not apply to persons who are receiving care, services and supplies pursuant to the following waivers under section 1915(c) of the federal social security act: the nursing facility transition and diversion waiver authorized pursuant to subdivision six-a of section three hundred sixty-six of this title; the traumatic brain injury waiver authorized pursuant to section twenty-seven hundred forty of the public health law, the long term home health care program waiver authorized pursuant to section three hundred sixty-seven-c of this title, and the home and community based services waiver for persons with developmental disabilities, or successor to such waiver, administered by the office for people with developmental disabilities pursuant to an agreement with the federal centers for medicare and Medicaid services.

* NB Effective until March 31, 2028

* 4. In determining the amount of income to be applied toward the cost of medical care, services and supplies of the institutionalized spouse, after the institutionalized spouse has been determined eligible for medical assistance, the following items shall be deducted from the monthly income of the institutionalized spouse in the following order:

- (a) a personal needs allowance;
- (b) a community spouse monthly income allowance;
- (c) a family allowance for each family member;
- (d) any expenses incurred for medical care, services or supplies and remedial care for the institutionalized spouse.

* NB Effective March 31, 2028

5. The following rules apply in determining the resources of the institutionalized spouse and the community spouse in establishing eligibility for medical assistance:

(a) All resources, including resources required to be considered in determining eligibility pursuant to paragraph (c) of subdivision five of section three hundred sixty-six of this title, held by either the institutionalized spouse or the community spouse or both shall be considered available to the institutionalized spouse to the extent that the value of the resources exceeds the community spouse resource allowance.

(b) An institutionalized spouse shall not be ineligible for medical assistance by reason of excess resources determined under paragraph (a)

of this subdivision, if the institutionalized spouse executes an assignment of support from the community spouse in favor of the social services district and the department, or the institutionalized spouse is unable to execute such assignment due to physical or mental impairment, or to deny assistance would create an undue hardship, as defined by the commissioner.

(c) After the month in which the institutionalized spouse has been determined eligible for medical assistance during a continuous period of institutionalization, no resource of the community spouse shall be considered available to the institutionalized spouse.

6. Notwithstanding paragraph (c) of subdivision five of section three hundred sixty-six of this title and after an institutionalized spouse is determined eligible for medical assistance, transfers of resources by the institutionalized spouse to the community spouse shall be permitted to the extent that the transfers are solely to or for the benefit of the community spouse and do not exceed the value of the community spouse resource allowance. Such transfers must be made as soon as practicable after the determination of eligibility.

7. (a) At the beginning or after the commencement of a continuous period of institutionalization, either spouse may request an assessment of the total value of their resources or a determination of the community spouse monthly income allowance, the amount of the family allowance, or the method of computing the amount of the family allowance, or the method of computing the amount of the community spouse income allowance.

(b) (i) Upon receipt of a request pursuant to paragraph (a) of this subdivision together with all relevant documentation of the resources of both spouses, the social services district shall assess and document the total value of the spouses' resources and provide each spouse with a copy of the assessment and the documentation upon which it was based. If the request is not part of an application for medical assistance benefits, the social services district may charge a fee for the assessment which is related to the cost of preparing and copying the assessment and documentation which fee may not exceed twenty-five dollars.

(ii) The social services district shall also notify each requesting spouse of the community spouse monthly income allowance, of the amount, if any, of the family allowances, and of the method of computing the amount of the community spouse monthly income allowance.

(c) The social services district shall also provide to the spouse a notice of the right to a fair hearing at the time of provision of the information requested under paragraph (a) of this subdivision or after a determination of eligibility for medical assistance. Such notice shall be in the form prescribed or approved by the commissioner and include a statement advising the spouse of the right to a fair hearing under this section.

8. (a) If, after a determination on an application for medical assistance has been made, either spouse is dissatisfied with the determination of the community spouse monthly allowance, the amount of monthly income otherwise available to the community spouse, the computation of the spousal share of resources, the attribution of resources or the determination of the community spouse's resource allocation, the spouse may request a fair hearing to dispute such determination. Such hearing shall be held within thirty days of the request therefor.

(b) If either spouse establishes that the community spouse needs income above the level established by the social services district as the minimum monthly maintenance needs allowance, based upon exceptional circumstances which result in significant financial distress (as defined by the commissioner in regulations), the department shall substitute an amount adequate to provide additional necessary income from the income otherwise available to the institutionalized spouse.

(c) If either spouse establishes that income generated by the community spouse resource allowance, established by the social services district, is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, the department shall establish a resource allowance for the spousal share of the institutionalized spouse adequate to provide such minimum monthly maintenance needs allowance.

§ 366-d. Medical assistance provider; prohibited practices. 1.

Definitions. As used in this section, "medical assistance provider" means any person, firm, partnership, group, association, fiduciary, employer or representative thereof or other entity who is furnishing care, services or supplies under title eleven of article five of this chapter.

2. No medical assistance provider shall:

(a) solicit, receive, accept or agree to receive or accept any payment or other consideration in any form from another person to the extent such payment or other consideration is given: (i) for the referral of services for which payment is made under title eleven of article five of this chapter; or (ii) to purchase, lease or order any good, facility, service or item for which payment is made under title eleven of article five of this chapter; or

(b) offer, agree to give or give any payment or other consideration in any form to another person to the extent such payment or other consideration is given: (i) for the referral of services for which payment is made under title eleven of article five of this chapter; or (ii) to purchase, lease or order any good, facility, service or item for which payment is made under title eleven of article five of this chapter;

(c) as used in this section "person" shall have the meaning set forth in subdivision seven of section 10.00 of the penal law.

(d) this subdivision shall not apply to any activity specifically exempt by federal statute or federal regulations promulgated thereunder.

3. Any medical assistance provider who violates the provisions of this section is guilty of a misdemeanor punishable by:

(a) a term of imprisonment in accordance with the penal law; or

(b) a fine of not less than five hundred dollars nor more than ten thousand dollars; or

(c) if the defendant has obtained money or property through a violation of the provisions of this section, a fine in an amount, fixed by the court, not to exceed double the amount of the defendant's gain from a violation of such provisions. In such event, the provisions of subdivision three of section 80.00 of the penal law shall be applicable

to the sentence; or

(d) both the imprisonment and the fine.

4. Any medical assistance provider who violates the provisions of this section and thereby obtains money or property having a value in excess of seven thousand five hundred dollars shall be guilty of a class E felony.

§ 366-e. Certified home health agency medicare billing. (a) Certified home health agencies shall bill under title XVIII of the federal social security act for services provided to all patients eligible for such program who, as defined by federal law and regulations, are: (i) homebound; (ii) receiving skilled services; and (iii) are receiving such services on an intermittent basis. The department, in consultation with the department of health and representatives of certified home health agencies with demonstrated ability to maximize medicare revenue, may promulgate regulations to implement this subdivision. Nothing contained herein shall be construed to prohibit agencies from billing for medical assistance reimbursement for eligible services provided to such patients which are not covered under title XVIII of the federal social security act meeting the standards established by the department pursuant to this section. Patient cases that meet the criteria established pursuant to this subdivision, where coverage has been denied under title XVIII of the federal social security act for the cost of care provided by a certified home health agency shall be referred by such agency to an organization pursuant to subdivision (b) of this section.

(b) The commissioner shall enter into agreements with persons or entities to provide for representation of persons meeting the criteria specified in subdivision (a) of this section who have been denied reimbursement, under title XVIII of the federal social security act, for services provided by a certified home health agency.

§ 366-f. Persons acting in concert with a medical assistance provider; prohibited practices.

1. No person acting in concert with a medical assistance provider shall, with intent to defraud:

(a) solicit, receive, accept or agree to receive or accept any payment or other consideration in any form from another person to the extent such payment or other consideration is given (i) for the referral of services for which payment is made under this title or (ii) to purchase, lease or order any good, facility, service or item for which payment is made under this title; or

(b) offer, agree to give or give any payment or other consideration in any form to another person to the extent such payment or other consideration is given (i) for the referral of services for which payment is made under this title; or (ii) to purchase, lease or order any good, facility, service or item for which payment is made under this title;

(c) this subdivision shall not apply to any activity specifically exempt by federal statute or federal regulations promulgated thereunder.

2. As used in this section, "person" shall have the meaning set forth in subdivision seven of section 10.00 of the penal law.

3. A violation of the provisions of this section is a misdemeanor punishable by:

(a) a term of imprisonment in accordance with the penal law; or

(b) a fine of not more than ten thousand dollars; or

(c) if the defendant has obtained money or property through a violation of the provisions of this section, a fine in an amount, fixed by the court, not to exceed double the amount of the defendant's gain from a violation of such provisions. In such event, the provisions of subdivision three of section 80.00 of the penal law shall be applicable to the sentence; or

(d) both the imprisonment and the fine.

4. Any such person who violates the provisions of this section and thereby obtains money or property having a value in excess of seven thousand five hundred dollars shall be guilty of a class E felony.

§ 366-g. Newborn enrollment for medical assistance. 1. Each hospital licensed under article twenty-eight of the public health law shall report to the department of health, or such other entity designated by the department of health, in such format as the department of health shall provide, each live birth of a child to a woman receiving medical assistance on the date of the birth. Such reports shall be made within five business days of the birth and shall include data identifying the mother and child.

2. Each hospital licensed under article twenty-eight of the public health law, upon discharge after delivery of a child, shall notify, in plain language and in such manner as the department of health shall provide, each mother in receipt of medical assistance that such child is deemed to be enrolled in the medical assistance program regardless of his or her receipt of a medical assistance identification card or client identification number or other proof of the child's eligibility, and may access care, services and supplies in accordance with this title and other applicable laws.

3. The commissioner of health shall establish a procedure to ensure that every child born to a mother who is receiving medical assistance on the date of the child's birth is automatically enrolled in the medical assistance program, assigned a client identification number, and issued an active medical assistance identification card, as soon as possible, but in no event later than ten business days from the receipt of the report required pursuant to subdivision one of this section.

4. (a) Consistent with the provisions of section three hundred sixty-six of this title, a child under the age of one year whose mother is receiving medical assistance, or whose mother was receiving medical assistance on the date of the child's birth, who is presented to a medical assistance provider, as defined in section three hundred sixty-six-d of this title, for care, shall be deemed to be enrolled in the medical assistance program regardless of the issuance of a medical assistance identification card or client identification number to such child or other proof of the child's eligibility.

(b) A medical assistance provider that furnishes medical assistance as

defined in section three hundred sixty-five-a of this title, to a child described in paragraph (a) of this subdivision shall be eligible for medical assistance reimbursement for such assistance regardless of whether the child has been issued a medical assistance identification card, client identification number or other proof of eligibility. Reimbursement under this section shall be in accordance with the provisions of this title, including, as appropriate, section 364-j of this title and all other applicable laws, rules, regulations and administrative directions.

§ 366-h. Automated system; established. Notwithstanding any inconsistent provision of law or regulation, the commissioner of health shall, as soon as practicable, establish an automated system to ensure that persons who meet the criteria for receipt of medical assistance benefits under paragraph (a) or (c) of subdivision four of section three hundred sixty-six of this title shall remain enrolled in the medical assistance program without interruption and receive the benefits set forth according to paragraph (a) or (c) of subdivision four of section three hundred sixty-six of this title. Pending implementation of such automated system, such commissioner shall, in consultation with the office of temporary and disability assistance, undertake and continue efforts to educate local departments of social services about the measures they must take to ensure that medical assistance benefits are provided to persons eligible for such benefits under subdivision four of section three hundred sixty-six of this title.

§ 366-i. Long-term care financing demonstration program. 1. Notwithstanding any inconsistent provision of sections three hundred sixty-six or three hundred sixty-six-c of this title, or any other provision of law, the commissioner of health is authorized to develop the long-term care financing demonstration program, an alternative program for the establishment of eligibility under the medical assistance program for up to five thousand persons.

2. The provisions of this section shall not take effect unless all

necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided to persons determined to be eligible for medical assistance pursuant to this section.

3. Defined private contribution. Upon being determined eligible for the demonstration, a person shall disclose his or her household's resources and income to the local social services district, or an entity acting on behalf of such district pursuant to subdivision five of this section, and shall enter into an agreement with such district or entity. The agreement shall require the person to apply a defined private contribution toward the cost of institutional or non-institutional long-term care, as defined by the commissioner in regulations. Such regulations shall provide for two levels of contribution: (a) a level that would permit a full medical assistance resource exemption pursuant to paragraph (a) of subdivision four of this section; and (b) a level or levels that would permit a medical assistance resource exemption that is equivalent to the value of the contribution pursuant to paragraph (b) of subdivision four of this section.

4. Medical assistance eligibility. Upon completion of the defined private contribution required by such agreement, the person may apply for medical assistance under this title and, if otherwise eligible, shall be eligible for such assistance either: (a) in the case of an individual who opts for a contribution level under paragraph (a) of subdivision three of this section, without regard to otherwise applicable resource requirements of this title; or (b) in the case of an individual who opts for a contribution level under paragraph (b) of subdivision three of this section, without regard to an amount of resources that is equivalent to the value of the contribution. In either case, eligibility for medical assistance under this title shall, with respect to the amount of resources that are exempt from consideration under this subdivision, be without regard to the lien and estate recovery provisions of section three hundred sixty-nine of this title; provided, however, that nothing herein shall prevent the imposition of a lien or recovery against property of an individual on account of medical assistance incorrectly paid.

5. The commissioner is authorized to enter into a contract with a private entity to assist in the administration of the demonstration program established by this section. Such a contract may include, without limitation, assistance in the development of the criteria for the defined private contribution, drafting of the defined contribution agreement, accepting and processing applications for demonstration participation under this section, and accepting and processing applications for medical assistance for demonstration participants. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner is authorized to enter into a contract under this subdivision without a competitive bid or request for proposal process.

6. If the commissioner exercises his or her authority to implement a demonstration program under this section he or she shall submit a report to the governor, president pro tem of the senate and speaker of the assembly by the first day of November, two thousand fifteen, on the implementation of this section. Such report shall include a statement as to the extent to which individuals have opted to participate in the demonstration, an analysis of the impact of the demonstration on medical assistance program long-term care costs, any recommendations for legislative action, and such other matters as may be pertinent.

§ 367. Authorization for hospital care. 1. Except as permitted by the regulations of the department, so far as practicable, no patient shall be admitted to a hospital as a public charge under this title or this chapter without the prior authorization of the social services official responsible for authorizing such care. If a patient is admitted without prior authorization of the appropriate social services official and the hospital has reason to believe that the patient will be unable to pay for his care, and is or may be eligible for care under this title or this chapter, it may send a notice containing a report of the facts of the case to such social services official who shall promptly advise the patient or his representative of his right to apply

for medical assistance and, if eligible, to have the cost of his care paid for under this chapter. If the identity of the social services official responsible for authorizing such care is not known by the hospital, such notice shall be sent to the commissioner of the social services district in which the hospital is located who shall make an investigation to determine which social services district may be responsible for authorizing such care and appropriately notify such district, which shall advise such patient or his representative of his right to apply, and if eligible to have the cost of his care paid for under this chapter. The cost of care of an eligible patient shall be a charge against a social services district only when authorized by the commissioner of social services of such district, which authorization shall not be withheld from any patient eligible for such care pursuant to this title and the regulations of the department.

2. Notwithstanding any inconsistent provision of law, the social services official responsible for authorizing hospital or health related services shall withhold payment for such services upon the certification of the commissioner of health that payment for such care is unauthorized under the medical assistance program.

§ 367-a. Payments; insurance. 1. (a) Any inconsistent provision of this chapter or other law notwithstanding, no assignment of the claim of any supplier of medical assistance shall be valid and enforceable as against any social services district or the department, and any payment with respect to any medical assistance shall be made to the person, institution, state department or agency or municipality supplying such medical assistance at rates established by the appropriate social services district and contained in its approved local medical plan, except as otherwise permitted or required by applicable federal and state provisions, including the regulations of the department; provided, however, that for those districts for whom the department has assumed payment responsibilities pursuant to section three hundred sixty-seven-b of this chapter, rates shall be established by the department, except as otherwise required by applicable provisions of federal or state law. A social services official may apply to the department for local

variations in rates to be applicable, upon approval by the department, to recipients for whom such district is responsible. Claims for payment shall be made in such form and manner as the department shall determine.

(b) Where an applicant for or recipient of public assistance or medical assistance has health insurance in force, is enrolled in a group health insurance plan or group health plan covering care and other medical benefits provided under this title, payment or part-payment of the premium, co-insurance, any deductible amounts and other cost-sharing obligations for such insurance may also be made when deemed cost-effective pursuant to the regulations of the department.

(c) Any inconsistent provisions of this title or other law notwithstanding and to the extent that federal financial participation is available therefor and in accordance with the regulations of the commissioner, payment of the premium for coverage under a group health insurance plan or group health plan may be made under the medical assistance program on behalf of a person not otherwise entitled to public assistance or medical assistance if the social services official determines that the savings in expenditures to the program as a result of such coverage are likely to exceed the amount of the premiums paid and such person has:

(i) income (as determined in accordance with the methodology used to determine eligibility for benefits under the federal supplemental security income program) in an amount less than or equal to one hundred per cent of the federal income official poverty line (as defined and annually revised by the federal office of management and budget) applicable to the person's family size;

(ii) resources (as determined in accordance with the methodology used to determine eligibility for benefits under the federal supplemental security income program) less than or equal to twice the maximum amount an individual is permitted to have to obtain benefits under the federal supplemental security income program; and

(iii) coverage available under a group health insurance plan or an employer-based group health plan provided pursuant to title XXII of the federal public health services act, section 4980B of the federal internal revenue code of 1986, or title VI of the employee retirement income security act of 1974.

(d) (i) Amounts payable under this title for medical assistance for

items and services provided to eligible persons who are also beneficiaries under part A of title XVIII of the federal social security act and items and services provided to qualified medicare beneficiaries under part A of title XVIII of the federal social security act shall not be less than the amount of any deductible and co-insurance liability of such eligible persons or for which such eligible persons or such qualified medicare beneficiaries would be liable under federal law were they not eligible for medical assistance or were they not qualified medicare beneficiaries with respect to such benefits under such part A.

(ii) Amounts payable under this title for medical assistance for items and services provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act and items and services provided to qualified medicare beneficiaries under part B of title XVIII of the federal social security act shall not be less than the amount of any deductible liability of such eligible persons or for which such eligible persons or such qualified medicare beneficiaries would be liable under federal law were they not eligible for medical assistance or were they not qualified medicare beneficiaries with respect to such benefits under such part B.

* (iii) With respect to items and services provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act and items and services provided to qualified medicare beneficiaries under part B of title XVIII of the federal social security act, the amount payable for services covered under this title shall be the amount of any co-insurance liability of such eligible persons pursuant to federal law were they not eligible for medical assistance or were they not qualified medicare beneficiaries with respect to such benefits under such part B, but shall not exceed the amount that otherwise would be made under this title if provided to an eligible person other than a person who is also a beneficiary under part B or is a qualified medicare beneficiary minus the amount payable under part B; provided, however, amounts payable under this title for items and services provided to eligible persons who are also beneficiaries under part B or to qualified medicare beneficiaries by an ambulance service under the authority of an operating certificate issued pursuant to article thirty of the public health law, a psychologist licensed under article one hundred fifty-three of the education law, or a

facility under the authority of an operating certificate issued pursuant to article sixteen, thirty-one or thirty-two of the mental hygiene law and with respect to outpatient hospital and clinic items and services provided by a facility under the authority of an operating certificate issued pursuant to article twenty-eight of the public health law, shall not be less than the amount of any co-insurance liability of such eligible persons or such qualified medicare beneficiaries, or for which such eligible persons or such qualified medicare beneficiaries would be liable under federal law were they not eligible for medical assistance or were they not qualified medicare beneficiaries with respect to such benefits under part B.

* NB Effective until April 1, 2027

* (iii) With respect to items and services provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act and items and services provided to qualified medicare beneficiaries under part B of title XVIII of the federal social security act, the amount payable for services covered under this title shall be the amount of any co-insurance liability of such eligible persons pursuant to federal law were they not eligible for medical assistance or were they not qualified medicare beneficiaries with respect to such benefits under such part B, but shall not exceed the amount that otherwise would be made under this title if provided to an eligible person other than a person who is also a beneficiary under part B or is a qualified medicare beneficiary minus the amount payable under part B; provided, however, amounts payable under this title for items and services provided to eligible persons who are also beneficiaries under part B or to qualified medicare beneficiaries by an ambulance service under the authority of an operating certificate issued pursuant to article thirty of the public health law, or a facility under the authority of an operating certificate issued pursuant to article sixteen, thirty-one or thirty-two of the mental hygiene law and with respect to outpatient hospital and clinic items and services provided by a facility under the authority of an operating certificate issued pursuant to article twenty-eight of the public health law, shall not be less than the amount of any co-insurance liability of such eligible persons or such qualified medicare beneficiaries, or for which such eligible persons or such qualified medicare beneficiaries would be

liable under federal law were they not eligible for medical assistance or were they not qualified medicare beneficiaries with respect to such benefits under part B.

* NB Effective April 1, 2027

* (iv) If a health plan participating in part C of title XVIII of the federal social security act pays for items and services provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act or to qualified medicare beneficiaries, the amount payable for services under this title shall be eighty-five percent of the amount of any co-insurance liability of such eligible persons pursuant to federal law if they were not eligible for medical assistance or were not qualified medicare beneficiaries with respect to such benefits under such part B; provided, however, amounts payable under this title for items and services provided to eligible persons who are also beneficiaries under part B or to qualified medicare beneficiaries by an ambulance service under the authority of an operating certificate issued pursuant to article thirty of the public health law, or a psychologist licensed under article one hundred fifty-three of the education law, shall not be less than the amount of any co-insurance liability of such eligible persons or such qualified medicare beneficiaries, or for which such eligible persons or such qualified medicare beneficiaries would be liable under federal law were they not eligible for medical assistance or were they not qualified medicare beneficiaries with respect to such benefits under part B.

* NB Effective until April 1, 2027

* (iv) If a health plan participating in part C of title XVIII of the federal social security act pays for items and services provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act or to qualified medicare beneficiaries, the amount payable for services under this title shall be the amount of any co-insurance liability of such eligible persons pursuant to federal law if they were not eligible for medical assistance or were not qualified medicare beneficiaries with respect to such benefits under such part B, but shall not exceed the amount that otherwise would be made under this title if provided to an eligible person other than a person who is also a beneficiary under part B or is a qualified medicare beneficiary minus the amount payable under part B;

provided, however, amounts payable under this title for items and services provided to eligible persons who are also beneficiaries under part B or to qualified medicare beneficiaries by an ambulance service under the authority of an operating certificate issued pursuant to article thirty of the public health law shall not be less than the amount of any coinsurance liability of such eligible persons or such qualified medicare beneficiaries, or for which such eligible persons or such qualified medicare beneficiaries would be liable under federal law were they not eligible for medical assistance or were they not qualified medicare beneficiaries with respect to such benefits under part B.

* NB Effective April 1, 2027

(e) Amounts payable under this title for medical assistance in the form of clinic services pursuant to article twenty-eight of the public health law, article sixteen of the mental hygiene law and independent practitioner services for individuals with developmental disabilities provided to eligible persons diagnosed with a developmental disability who are also beneficiaries under part B of title XVIII of the federal social security act, or provided to persons diagnosed with a developmental disability who are qualified medicare beneficiaries under part B of title XVIII of such act shall not be less than the approved medical assistance payment level less the amount payable under part B.

(f) Amounts payable under this title for medical assistance in the form of outpatient mental health services under article thirty-one or outpatient chemical dependence services including opioid treatment services under article thirty-two of the mental hygiene law provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act or provided to qualified medicare beneficiaries under part B of title XVIII of such act shall not be less than the approved medical assistance payment level less the amount payable under part B.

(g) Notwithstanding any provision of this section to the contrary, amounts payable under this title for medical assistance in the form of hospital outpatient services or diagnostic and treatment center services pursuant to article twenty-eight of the public health law provided to eligible persons who are also beneficiaries under part B of title XVIII of the federal social security act or provided to qualified medicare beneficiaries under part B of title XVIII of such act shall not exceed

the approved medical assistance payment level less the amount payable under part B.

(h) Amounts payable under this title for medical assistance in the form of freestanding clinic services pursuant to article twenty-eight of the public health law provided to eligible persons participating in the New York traumatic brain injury waiver program who are also beneficiaries under part B of title XVIII of the federal social security act or who are qualified medicare beneficiaries under part B of title XVIII of such act shall not be less than the approved medical assistance payment level less the amount payable under part B.

2. (a) Any inconsistent provision of this chapter notwithstanding, provision for medical care and other medical benefits available under this title may be made, in whole or in part, either under this title or other appropriate provisions of this chapter, through insurance or other prepaid plans, in accordance with the regulations of the department.

(b) Any inconsistent provision of this chapter or other law notwithstanding, upon furnishing assistance under this title to any applicant or recipient of medical assistance, the local social services district or the department shall be subrogated, to the extent of the expenditures by such district or department for medical care furnished, to any rights such person may have to medical support or reimbursement from liable third parties, including but not limited to health insurers, self-insured plans, group health plans, service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service. For purposes of this section, the term medical support shall mean the right to support specified as support for the purpose of medical care by a court or administrative order. The right of subrogation does not attach to insurance benefits paid or provided under any health insurance policy prior to the receipt of written notice of the exercise of subrogation rights by the carrier issuing such insurance, nor shall such right of subrogation attach to any benefits which may be claimed by a social services official or the department, by agreement or other established procedure, directly from an insurance carrier. No right of subrogation to insurance benefits available under any health insurance policy shall

be enforceable unless written notice of the exercise of such subrogation right is received by the carrier within three years from the date services for which benefits are provided under the policy or contract are rendered. Liable third parties shall not deny a claim made by a social services official or the department in conformance with this paragraph solely on the basis of the date of submission of the claim, the type or format of the claim form, a failure to obtain prior authorization, or a failure to present proper documentation at the point-of-sale that is the basis of the claim. Liable third parties shall respond to a request for payment within sixty calendar days after receipt of written proof of loss or claim for payment for health care services provided to a recipient of Medicaid who is covered by the third party and shall not charge a fee to process or adjudicate a claim. The local social services district or the department shall also notify the carrier when the exercise of subrogation rights has terminated because a person is no longer receiving assistance under this title. Such carrier shall establish mechanisms to maintain the confidentiality of all individually identifiable information or records. Such carrier shall limit the use of such information or record to the specific purpose for which such disclosure is made, and shall not further disclose such information or records.

(c) In accordance with regulations of the department and to the extent authorized by federal law and regulation, the social services district is authorized to retain, in addition to amounts retained as repayment for its share of the costs of medical assistance provided, a portion of the federal share of the amount collected as medical support or third party benefits assigned under paragraph (f) of subdivision four of section three hundred sixty-six of this article, when such district, or other governmental agency pursuant to an agreement with such district, has collected such medical support or third party benefits on behalf of a person receiving medical assistance whose rights to medical support or third party benefits have been assigned to the state or to the appropriate social services official. Where more than one district has been involved in enforcing or collecting such amounts, the federal incentive shall be apportioned among each such district in accordance with the regulations of the department.

3. (a) As used in this subdivision, the following terms shall have the following meanings:

(1) "Qualified medicare beneficiary" means a person who is entitled to hospital insurance benefits under part A of title XVIII of the federal social security act, whose income does not exceed one hundred thirty-eight percent of the official federal poverty line applicable to the person's family size and whose resources do not exceed twice the maximum amount of resources a person may have in order to qualify for benefits under the federal supplemental security income program of title XVI of the federal social security act, as determined for purposes of such program. To the extent that federal financial participation is available, a person whose resources are in excess of the amount specified in this subparagraph but otherwise meets the requirements shall be considered a "qualified medicare beneficiary".

(2) "Qualified individual" means a person who is entitled to hospital insurance benefits under part A of title XVIII of the federal social security act and whose income is greater than one hundred thirty-eight percent, but less than or equal to one hundred eighty-six percent, of the federal poverty line, for the applicable family size, and who is not otherwise eligible for medical assistance under this article; referred to as a qualified individual.

(3) "Qualified disabled and working individual" means an individual who is not otherwise eligible for medical assistance and:

(i) who is entitled to enroll for hospital insurance benefits under section 1818A of part A of title XVIII of the federal social security act;

(ii) whose income does not exceed two hundred percent of the official federal poverty line applicable to the person's family size; and

(iii) whose resources do not exceed twice the maximum amount of resources that an individual or a couple, in the case of a married individual, may have and obtain federal supplemental security income benefits under title XVI of the federal social security act, as determined for purposes of that program.

For purposes of this subparagraph, income and resources are determined by the same methodology as is used for determining eligibility under the federal supplemental security income benefits under title XVI of the

federal social security act.

(b) Payment of premiums for enrolling qualified disabled and working individuals and qualified medicare beneficiaries under Part A of title XVIII of the federal social security act and for enrolling such beneficiaries and eligible recipients of public assistance under part B of title XVIII of the federal social security act, together with the costs of the applicable co-insurance and deductible amounts on behalf of such beneficiaries, and recipients, and premiums under section 1839 of the federal social security act shall be made and the cost thereof borne by the state or by the state and social services districts, respectively, in accordance with the regulations of the department, provided, however, that the share of the cost to be borne by a social services district, if any, shall in no event exceed the proportionate share borne by such district with respect to other expenditures under this title. Moreover, if the director of the budget approves, payment of premiums for enrolling persons who have been determined to be eligible for medical assistance only may be made and the cost thereof borne or shared pursuant to this subdivision.

(c) (1) Beginning April first, two thousand two and to the extent that federal financial participation is available at a one hundred percent federal Medical assistance percentage and subject to sections 1933 and 1902(a)(10)(E)(iv) of the federal social security act, medical assistance shall be available for full payment of medicare part B premiums for qualified individuals.

(2) Premium payments for the individuals described in subparagraph one of this paragraph will be one hundred percent federally funded up to the amount of the federal allotment. The department shall discontinue enrollment into the program when the part B premium payments made pursuant to subparagraph one of this paragraph meet the yearly federal allotment.

(3) (i) The commissioner of health shall develop a simplified application form, consistent with federal law, for payments pursuant to this section. The commissioner of health, in cooperation with the office for the aging, shall publicize the availability of such payments to medicare beneficiaries.

(ii) Low-income subsidy data transmitted from the social security administration to local departments of social services in accordance

with section 1144(c)(3) of the federal social security act shall be treated as an application for the medicare savings program, without requiring submission of another application. Any information verified by the social security administration shall be accepted without further verification, if the information provided through low-income subsidy data supports a determination of eligibility under this subdivision. The commissioner of health shall report on an annual basis on the status of the medicare savings program and the number of applications received by local social services districts under this article.

(d) (1) Payment of premiums for enrolling individuals in qualified health plans offered through a health insurance exchange established pursuant to the federal Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), shall be available to individuals who:

(i) immediately prior to being enrolled in the qualified health plan, were or would have been eligible under the family health plus program as a parent or stepparent of a child under the age of twenty-one, and whose MAGI household income, as defined in subparagraph eight of paragraph (a) of subdivision one of section three hundred sixty-six of this title, exceeds one hundred thirty-three percent of the federal poverty line for the applicable family size;

(ii) are not otherwise eligible for medical assistance under this title; and

(iii) are enrolled in a standard health plan in the silver level, as defined in 42 U.S.C. 18022.

(2) Payment pursuant to this paragraph shall be for premium obligations of the individual under the qualified health plan and shall continue only if and for so long as the individual's MAGI household income exceeds one hundred thirty-three percent, but does not exceed one hundred fifty percent, of the federal poverty line for the applicable family size, or, if earlier, until the individual is eligible for enrollment in a standard health plan pursuant to section three hundred sixty-nine-gg of this article.

(3) The commissioner of health shall submit amendments to the state plan for medical assistance and/or submit one or more applications for waivers of the federal social security act as may be necessary to

receive federal financial participation in the costs of payments made pursuant to this paragraph; provided further, however, that nothing in this subparagraph shall be deemed to affect payments for premiums pursuant to this paragraph if federal financial participation in the costs of such payments is not available.

4. No social services district shall make final payments pursuant to title XIX of the federal social security act for benefits available under title XVIII of such act without documentation that title XVIII claims have been filed and denied.

5. (a) When medical care, services and supplies are furnished an eligible person on behalf of a social services district under this title, such social services district is authorized to utilize any appropriate organization as a fiscal intermediary to audit and make payment for such district's share of the cost of such care, services and supplies.

(b) To carry out the purposes of paragraph (a), the department, on behalf of itself and any of the social services districts, may enter into agreements with appropriate organizations to act as fiscal intermediaries.

6. (a) Notwithstanding any inconsistent provision of law, payment for claims for services as specified in paragraph (d) of this subdivision furnished to eligible persons under this title, subject to paragraph (b) of this subdivision shall be reduced in accordance with the provisions of paragraph (c) of this subdivision by an amount not to exceed the maximum amount authorized by federal law and regulations as a co-payment amount, which co-payment amount the provider of such services may charge the recipient, provided, however, no provider may deny such services to an individual eligible for services based on the individual's inability to pay the co-payment amount.

(b) Co-payments shall apply to all eligible persons for the services defined in paragraph (d) of this subdivision with the exception of:

- (i) individuals under twenty-one years of age;
- (ii) pregnant women;
- (iii) individuals who are inpatients in a medical facility who have

been required to spend all of their income for medical care, except their personal needs allowance or residents of community based residential facilities licensed by the office of mental health or the office for people with developmental disabilities who have been required to spend all of their income, except their personal needs allowance;

(iv) individuals enrolled in health maintenance organizations or other entities which provide comprehensive health services, or other managed care programs for services covered by such programs, except that such persons, other than persons otherwise exempted from co-payments pursuant to subparagraphs (i), (ii), (iii) and (v) of this paragraph, and other than those persons enrolled in a managed long term care program, shall be subject to co-payments as described in subparagraph (v) of paragraph (d) of this subdivision;

(v) individuals whose family income is less than one hundred percent of the federal poverty line, as defined in subparagraph four of paragraph (a) of subdivision one of section three hundred sixty-six of this title, for a family of the same size; and

(vi) any other individuals required to be excluded by federal law or regulations.

(b-1) The commissioner is authorized to submit any request or application to the Centers for Medicare and Medicaid Services as may be necessary to be granted a waiver of the requirement for the department of health to calculate its Medicaid payments to managed care organizations to include cost sharing established under the state plan for medical assistance for enrollees who are not exempt from cost sharing. In the absence of such a waiver, the commissioner shall adjust Medicaid payments to managed care organizations beginning October first, two thousand fifteen or on the date the Centers for Medicare and Medicaid Services commences enforcement of such requirement, whichever is later.

* (c) (i) Co-payments charged pursuant to this subdivision for non-institutional services shall not exceed the following table, provided, however, that the department may establish standard co-payments for services based upon the average or typical payment for that service:

State's payment
for the services

Maximum co-payment
chargeable to recipient

\$10 or less	\$.50
\$10.01 to \$25	\$1.00
\$25.01 to \$50	\$2.00
\$50.01 or more	\$3.00

(ii) co-payments charged pursuant to this subdivision for each discharge for inpatient care shall be twenty-five dollars.

(iii) Notwithstanding any other provision of this paragraph, co-payments charged for each generic prescription drug dispensed shall be one dollar and for each brand name prescription drug dispensed shall be two dollars and fifty cents; provided, however, that the co-payments charged for each brand name prescription drug reimbursed pursuant to subparagraph (ii) of paragraph (a-1) of subdivision four of section three hundred sixty-five-a of this title shall be one dollar.

(iv) When an individual is initially dispensed or prescribed a seven or fewer days supply of an opioid pursuant to paragraph (b) of subdivision five of section three thousand three hundred thirty-one of the public health law, and is subsequently dispensed or prescribed an additional supply of such opioid for the same underlying condition, the total co-payment that may be charged to such an individual for the initial prescription plus all subsequent prescriptions for the same underlying condition for up to a total of thirty-days supply of such opioid shall not exceed the amount set forth in subparagraph (iii) of this paragraph.

* NB Repealed March 31, 2029

(d) Co-payments shall apply to the following services, subject to such exceptions for subcategories of these services as recognized by the commissioner in regulations, provided in accordance with section three hundred sixty-five-a of this article and the regulations of the department, to the extent permitted by title XIX of the federal social security act:

(i) in-patient care in a general hospital, as defined in subdivision ten of section twenty-eight hundred one of the public health law;

(ii) out-patient hospital and clinic services except for mental health services, and developmental disability services, alcohol and substance abuse services and methadone maintenance services;

(iii) home health services, including services provided under the long term home health care program, provided however, home health providers

shall not require employees providing services in the home to collect the co-payment amount;

(iv) sickroom supplies;

(v) drugs, excepting psychotropic drugs and drugs with FDA approved indications for the treatment of tuberculosis as specified by the department and those drugs intended for use by residents of adult care facilities licensed by the department of health who have been required to spend all of their income, except their personal needs allowance;

(vi) clinical laboratory services;

(vii) x-rays;

(viii) emergency room services provided for non-urgent or non-emergency medical care, provided however, co-payments shall not be required for emergency services or family planning services and supplies;

(e) In the period from January first, nineteen hundred ninety-three to March thirty-first, nineteen hundred ninety-three no recipient shall be required to pay more than a total of fifty dollars in co-payments required by this subdivision for drugs, nor shall reductions in payments as a result of such co-payments exceed fifty dollars for any recipient.

(f) (i) In the year commencing April first, nineteen hundred ninety-three and for each year thereafter, and ending in the year concluding on March thirty-first, two thousand five, no recipient shall be required to pay more than a total of one hundred dollars in co-payments required by this subdivision, nor shall reductions in payments as a result of such co-payments exceed one hundred dollars for any recipient.

(ii) In the year commencing April first, two thousand five and for each year thereafter, no recipient shall be required to pay more than a total of two hundred dollars in co-payments required by this subdivision, nor shall reductions in payments as a result of such co-payments exceed two hundred dollars for any recipient.

(g) The commissioner shall promptly:

(i) promulgate a regulation making it an unacceptable practice under the medical assistance program for a provider to deny services to an individual eligible for services based on the individual's inability to pay the co-pay amount required by this subdivision;

(ii) establish and maintain a toll-free hotline which may be used to

report a violation of the regulation promulgated pursuant to subparagraph (i) of this paragraph; and

(iii) provide notice to all recipients summarizing their rights and obligations under this subdivision.

7. (a) Every manufacturer or wholesaler of drugs, prescriptions or poisons registered under the provisions of section sixty-eight hundred eight of the education law, shall, upon request of the department for any information pertaining to wholesale prices charged to pharmacists for any drugs available under the medical assistance program, make the requested information available to the department on a monthly basis, or such other periodic basis as the department shall request.

(b) The department shall provide for financial arrangements with any manufacturer or wholesaler of drugs, prescriptions or poisons as may be necessary to reimburse such manufacturer or wholesaler for its actual and necessary costs included in furnishing the requested information.

(c) Any information obtained pursuant to the provisions of this subdivision shall not be made available for public inspection or copying under the provisions of article six of the public officers law. The department shall not disclose such information to any person, firm, department or agency, except any state agency or department as may be necessary for the administration of the medical assistance program under the provisions of this chapter or any other law.

(d) Notwithstanding any inconsistent provision of law, if a manufacturer (as defined under section 1927 of the federal social security act) has entered into a rebate agreement with the department or with the federal secretary of health and human services on behalf of the department under section 1927 of the federal social security act, the department shall reimburse for covered outpatient drugs which are dispensed under the medical assistance program to all persons in receipt of medical assistance benefits as a result of their eligibility having been established under subparagraph one or nine of paragraph (a) of subdivision one of section three hundred sixty-six of this title, and which are dispensed to all persons eligible for health care services as a result of their eligibility having been established under subdivision two of section three hundred sixty-nine-ee of this article, only pursuant to the terms of the rebate agreement between the department and

such manufacturer; provided, however, that any agreement between the department and a manufacturer entered into before August first, nineteen hundred ninety-one, shall be deemed to have been entered into on April first, nineteen hundred ninety-one; and provided further, that if a manufacturer has not entered into an agreement with the department before August first, nineteen hundred ninety-one, such agreement shall not be effective until April first, nineteen hundred ninety-two, unless such agreement provides that rebates will be retroactively calculated as if the agreement had been in effect on April first, nineteen hundred ninety-one. The rebate agreement between such manufacturer and the department shall utilize for single source drugs and innovator multiple source drugs the identical formula used to determine the basic rebate for federal financial participation single source drugs and innovator multiple source drugs, pursuant to paragraph one of subdivision (c) of section 1927 of the federal social security act, to determine the amount of the rebate pursuant to this paragraph. The rebate agreement between such manufacturer and the department shall utilize for non-innovator multiple source drugs the identical formula used to determine the basic rebate for federal financial participation non-innovator multiple source drugs, pursuant to paragraphs three and four of subdivision (c) of section 1927 of the federal social security act, to determine the amount of the rebate pursuant to this paragraph. The terms and conditions of such rebate agreement with respect to periodic payment of the rebate, provision of information by the department, audits, manufacturer provision of information verification of surveys, penalties, confidentiality of information, and length of the agreement shall apply to drugs of the manufacturer dispensed under the medical assistance program to all persons in receipt of medical assistance benefits as a result of their eligibility having been established under subparagraph one or nine of paragraph (a) of subdivision one of section three hundred sixty-six of this title, and which are dispensed to all persons eligible for health care services as a result of their eligibility having been established under subdivision two of section three hundred sixty-nine-ee of this article. The department in providing utilization data to a manufacturer (as provided for under section 1927.4(b)(1)(A) of the federal social security act) shall provide such data by zip code, if requested, for drugs covered under a rebate agreement.

* (e) During the period from April first, two thousand fifteen through March thirty-first, two thousand twenty-nine, the commissioner may, in lieu of a managed care provider or pharmacy benefit manager, negotiate directly and enter into an arrangement with a pharmaceutical manufacturer for the provision of supplemental rebates relating to pharmaceutical utilization by enrollees of managed care providers pursuant to section three hundred sixty-four-j of this title and may also negotiate directly and enter into such an agreement relating to pharmaceutical utilization by medical assistance recipients not so enrolled. Such rebate arrangements shall be limited to the following: antiretrovirals approved by the FDA for the treatment of HIV/AIDS, accelerated approval drugs established pursuant to this paragraph, opioid dependence agents and opioid antagonists listed in a statewide formulary established pursuant to subparagraph (vii) of this paragraph, hepatitis C agents, high cost drugs as provided for in subparagraph (viii) of this paragraph, gene therapies as provided for in subparagraph (ix) of this paragraph, and any other class or drug designated by the commissioner for which the pharmaceutical manufacturer has in effect a rebate arrangement with the federal secretary of health and human services pursuant to 42 U.S.C. § 1396r-8, and for which the state has established standard clinical criteria. No agreement entered into pursuant to this paragraph shall have an initial term or be extended beyond the expiration or repeal of this paragraph. For purposes of this paragraph, an "accelerated approval" is a drug or labeled indication of a drug authorized by the Federal Food, Drug and Cosmetic Act for drugs approved under Subpart H of 21 CFR Part 314 and Subpart E of 21 CFR Part 601 for serious conditions that fill an unmet medical need based on whether the drug has an effect on a surrogate clinical endpoint, and is pending verification of clinical benefit in confirmatory trials.

(i) The manufacturer shall not enter into any rebate arrangements with a managed care provider, or any of a managed care provider's agents, including but not limited to any pharmacy benefit manager on the gene therapy, drug, or drug classes subject to this paragraph when the state has a rebate arrangement in place and standard clinical criteria are imposed on the managed care provider.

(ii) The commissioner shall establish adequate rates of reimbursement which shall take into account both the impact of the commissioner

negotiating such arrangements and any limitations imposed on the managed care provider's ability to establish clinical criteria relating to the utilization of such drugs. In developing the managed care provider's reimbursement rate, the commissioner shall identify the amount of reimbursement for such drugs as a separate and distinct component from the reimbursement otherwise made for prescription drugs as prescribed by this section.

(iii) The commissioner shall submit a report to the temporary president of the senate and the speaker of the assembly annually by December thirty-first. The report shall analyze the adequacy of rates to managed care providers for drug expenditures related to the classes under this paragraph.

(iv) Nothing in this paragraph shall be construed to require a pharmaceutical manufacturer to enter into a rebate arrangement satisfactory to the commissioner relating to pharmaceutical utilization by enrollees of managed care providers pursuant to section three hundred sixty-four-j of this title or relating to pharmaceutical utilization by medical assistance recipients not so enrolled.

(v) All clinical criteria, including requirements for prior approval, and all utilization review determinations established by the state as described in this paragraph for the gene therapies, drugs, or drug classes subject to this paragraph shall be developed using evidence-based and peer-reviewed clinical review criteria in accordance with article two-A of the public health law, as applicable.

(vi) All prior authorization and utilization review determinations related to the coverage of any drug subject to this paragraph shall be subject to article forty-nine of the public health law, section three hundred sixty-four-j of this title, and article forty-nine of the insurance law, as applicable. Nothing in this paragraph shall diminish any rights relating to access, prior authorization, or appeal relating to any drug class or drug afforded to a recipient under any other provision of law.

(vii) The department shall publish a statewide formulary of opioid dependence agents and opioid antagonists, which shall include as "preferred drugs" all drugs in such classes, which shall include all subclasses of a given drug that have a different pharmacological route of administration, provided that:

(A) for all drugs that are included as of the date of the enactment of this subparagraph on a formulary of a managed care provider, as defined in section three hundred sixty-four-j of this title, or in the Medicaid fee-for-service preferred drug program pursuant to section two hundred seventy-two of the public health law, the cost to the department for such drug is equal to or less than the lowest cost paid for the drug by any managed care provider or by the Medicaid fee-for-service program after the application of any rebates, as of the date that the department implements the statewide formulary established by this subparagraph. Where there is a generic version of the drug approved by the Food and Drug Administration as bioequivalent to a brand name drug pursuant to 21 U.S.C. § 355(j)(8)(B), the cost to the department for the brand and generic versions shall be equal to or less than the lower of the two maximum costs determined pursuant to the previous sentence; and

(B) for all drugs that are not included as of the date of the enactment of this subparagraph on a formulary of a managed care provider, as defined in section three hundred sixty-four-j of this title, or in the Medicaid fee-for-service preferred drug program pursuant to section two hundred seventy-two of the public health law, the department is able to obtain the drug at a cost that is equal to or less than the lowest cost to the department of other comparable drugs in the class, after the application of any rebates. Where there is a generic version of the drug approved by the Food and Drug Administration as bioequivalent to a brand name drug pursuant to 21 U.S.C. § 355(j)(8)(B), the cost to the department for the brand and generic versions shall be equal to or less than the lower of the two maximum costs determined pursuant to the previous sentence.

(viii) The commissioner may identify and refer high cost drugs, as defined in clause (D) of this subparagraph, that are not included as of the date of the enactment of this subparagraph on a formulary of a managed care provider or covered by the Medicaid fee for service of program to the drug utilization review board established by section three hundred sixty-nine-bb of this article for a recommendation as to whether a target supplemental Medicaid rebate should be paid by the manufacturer of the drug to the department and the target amount of the rebate.

(A) If the commissioner intends to refer a high cost drug to the drug

utilization review board pursuant to this subparagraph, the commissioner shall notify the manufacturer of such drug and shall attempt to reach agreement with the manufacturer on a rebate arrangement satisfactory to the commissioner for the drug prior to referring the drug to the drug utilization review board for review. Such arrangement may be based on evidence based research, including, but not limited to, such research operated or conducted by or for other state governments, the federal government, the governments of other nations, and third party payers or multi-state coalitions, provided however that the department shall account for the effectiveness of the drug in treating the conditions for which it is prescribed or in improving a patient's health, quality of life, or overall health outcomes, and the likelihood that use of the drug will reduce the need for other medical care, including hospitalization.

(B) In the event that the commissioner and the manufacturer have previously agreed to a rebate arrangement for a drug pursuant to this paragraph, the drug shall not be referred to the drug utilization review board for any further rebate agreement for the duration of the previous rebate agreement, provided however, the commissioner may refer a drug to the drug utilization review board if the commissioner determines there are significant and substantiated utilization or market changes, new evidence-based research, or statutory or federal regulatory changes that warrant additional rebates. In such cases, the department shall notify the manufacturer and provide evidence of the changes or research that would warrant additional rebates, and shall attempt to reach agreement with the manufacturer on a rebate for the drug prior to referring the drug to the drug utilization review board for review.

(C) If the commissioner is unsuccessful in entering into a rebate arrangement with the manufacturer of the drug satisfactory to the department, the drug manufacturer shall in that event be required to provide to the department, on a standard reporting form developed by the department, the information as described in subdivision six of section two hundred eighty of the public health law. All information disclosed pursuant to this clause shall be considered confidential and shall not be disclosed by the department in a form that identifies a specific manufacturer or prices charged for drugs by such manufacturer.

(D) For the purposes of this subparagraph, the term "high cost drug"

shall mean a brand name drug or biologic that has a launch wholesale acquisition cost of thirty thousand dollars or more per year or course of treatment, or a biosimilar drug that has a launch wholesale acquisition cost that is not at least fifteen percent lower than the referenced brand biologic at the time the biosimilar is launched, or a generic drug that has a wholesale acquisition cost of one hundred dollars or more for a thirty day supply or recommended dosage approved for labeling by the federal Food and Drug Administration, or a brand name drug or biologic that has a wholesale acquisition cost increase of three thousand dollars or more in any twelve-month period, or course of treatment if less than twelve months.

(ix) For purposes of this paragraph, a "gene therapy" is a drug (A) approved under section 505 of the Federal Food, Drug and Cosmetics Act or licensed under subsection (a) or (k) of section 351 of the Public Health Services Act; (B) that treats a rare disease or condition, as defined in 21 USC § 360bb(a)(2), that is life-threatening, as defined in 42 CFR 321.18; (C) is considered a gene therapy by the federal Food and Drug Administration for which a biologics license pursuant to 21 CFR 600-680 is held; (D) if administered in accordance with the labeling of such drug, is expected to result in either the cure of such disease or condition or a reduction in the symptoms of such disease or condition that materially improves the patient's length or quality of life; and (E) is expected to achieve the result described in clause (D) of this subparagraph after not more than three administrations.

* NB Repealed March 31, 2032

* 8. No government agency shall purchase, pay for, or make reimbursement or grants-in-aid for any service in a residential treatment facility for children and youth or a comprehensive psychiatric emergency program unless at the time such service was provided, the residential treatment facility for children and youth or comprehensive psychiatric emergency program possessed a valid operating certificate authorizing such service. Notwithstanding any inconsistent provision of law, no government agency shall make payments pursuant to this title or title nineteen of the federal social security act to a residential treatment facility for children and youth for service to a person whose need for care and treatment in such a facility was not certified pursuant to section 9.51 of the mental hygiene law.

* NB Effective until July 1, 2027

* 8. No government agency shall purchase, pay for, or make reimbursement or grants-in-aid for any service in a residential treatment facility for children and youth unless at the time such service was provided, the residential treatment facility for children and youth possessed a valid operating certificate authorizing such service. Notwithstanding any inconsistent provision of law, no government agency shall make payments pursuant to this title or title nineteen of the federal social security act to a residential treatment facility for children and youth for service to a person whose need for care and treatment in such a facility was not certified pursuant to section 9.51 of the mental hygiene law.

* NB Effective July 1, 2027

* 9. Notwithstanding any inconsistent provision of law or regulation to the contrary, for those drugs which may not be dispensed without a prescription as required by section sixty-eight hundred ten of the education law and for which payment is authorized pursuant to paragraph (g) of subdivision two of section three hundred sixty-five-a of this title, and for those drugs that are available without a prescription as required by section sixty-eight hundred ten of the education law but are reimbursed as items of medical assistance pursuant to paragraph (a) of subdivision four of section three hundred sixty-five-a of this title, payments under this title shall be made at the following amounts:

(a) for drugs provided by medical practitioners and claimed separately by the practitioners the lower of:

(i) (1) an amount equal to the national average drug acquisition cost set by the federal centers for medicare and medicaid services for the drug, if any, or if such amount is not available, the wholesale acquisition cost of the drug based on the package size dispensed from, as reported by the prescription drug pricing service used by the department, (2) the federal upper limit, if any, established by the federal centers for medicare and medicaid services; (3) the state maximum acquisition cost, if any, established pursuant to paragraph (e) of this subdivision; or (4) the actual cost of the drug to the practitioner.

(ii) Notwithstanding subparagraph (i) of this paragraph and paragraph (e) of this subdivision, for the Medicaid fee-for-service program, if a

drug has been purchased from a manufacturer by a covered entity pursuant to section 340B of the federal public health service act (42 USCA § 256b), the actual amount paid by such covered entity. For purposes of this subparagraph, a "covered entity" is an entity that meets the requirements of paragraph four of subdivision (a) of such section that elects to participate in the program established by such section, and that causes claims for payment for drugs covered by this subparagraph to be submitted to the medical assistance program, either directly or through an authorized contract pharmacy. No medical assistance payments may be made to a covered entity or to an authorized contract pharmacy of a covered entity for drugs that are eligible for purchase under the section 340B program and are dispensed on an outpatient basis to patients of the covered entity, other than under the provisions of this subparagraph. Medical practitioners submitting claims for reimbursement of drugs purchased pursuant to section 340B of the public health service act shall notify the department that the claim is eligible for purchase under the 340B program, consistent with claiming instructions issued by the department to identify such claims.

(iii) In no event shall a medical practitioner be reimbursed at an amount that is lower than the state maximum acquisition cost, or for drugs that do not have a state maximum acquisition cost, the wholesale acquisition cost of the drug based on the package size.

(b) for drugs dispensed by pharmacies:

(i) (A) if the drug dispensed is a generic prescription drug, the lower of: (1) an amount equal to the national average drug acquisition cost set by the federal centers for medicare and medicaid services for the drug, if any, or if such amount is not available, the wholesale acquisition cost of the drug based on the package size dispensed from, as reported by the prescription drug pricing service used by the department, less seventeen and one-half percent thereof; (2) the federal upper limit, if any, established by the federal centers for medicare and medicaid services; (3) the state maximum acquisition cost, if any, established pursuant to paragraph (e) of this subdivision; or (4) the dispensing pharmacy's usual and customary price charged to the general public; (B) if the drug dispensed is available without a prescription as required by section sixty-eight hundred ten of the education law but is reimbursed as an item of medical assistance pursuant to paragraph (a) of

subdivision four of section three hundred sixty-five-a of this title, the lower of (1) an amount equal to the national average drug acquisition cost set by the federal centers for medicare and medicaid services for the drug, if any, or if such amount is not available, the wholesale acquisition cost of the drug based on the package size dispensed from, as reported by the prescription drug pricing service used by the department, (2) the federal upper limit, if any, established by the federal centers for medicare and medicaid services; (3) the state maximum acquisition cost if any, established pursuant to paragraph (e) of this subdivision; or (4) the dispensing pharmacy's usual and customary price charged to the general public;

(ii) if the drug dispensed is a brand-name prescription drug, the lower of:

(A) an amount equal to the national average drug acquisition cost set by the federal centers for medicare and medicaid services for the drug, if any, or if such amount is not available, the wholesale acquisition cost of the drug based on the package size dispensed from, as reported by the prescription drug pricing service used by the department; or (B) the dispensing pharmacy's usual and customary price charged to the general public; and

(iii) notwithstanding subparagraphs (i) and (ii) of this paragraph and paragraphs (d) and (e) of this subdivision, if the drug dispensed is a drug that has been purchased from a manufacturer by a covered entity pursuant to section 340B of the federal public health service act (42 USCA § 256b), the actual amount paid by such covered entity pursuant to such section, plus the reasonable administrative costs, as determined by the commissioner, incurred by the covered entity or by an authorized contract pharmacy in connection with the purchase and dispensing of such drug and the tracking of such transactions. For purposes of this subparagraph, a "covered entity" is an entity that meets the requirements of paragraph four of subsection (a) of such section, that elects to participate in the program established by such section, and that causes claims for payment for drugs covered by this subparagraph to be submitted to the medical assistance program, either directly or through an authorized contract pharmacy. No medical assistance payments may be made to a covered entity or to an authorized contract pharmacy of a covered entity for drugs that are eligible for purchase under the

section 340B program and are dispensed on an outpatient basis to patients of the covered entity, other than under the provisions of this subparagraph. Pharmacies submitting claims for reimbursement of drugs purchased pursuant to section 340B of the public health service act shall notify the department that the claim is eligible for purchase under the 340B program, consistent with claiming instructions issued by the department to identify such claims.

(c) Notwithstanding subparagraph (i) of paragraph (b) of this subdivision, if a qualified prescriber certifies "brand medically necessary" or "brand necessary" in his or her own handwriting directly on the face of a prescription, or in the case of electronic prescriptions, inserts an electronic direction to clarify "brand medically necessary" or "brand necessary", for a multiple source drug for which a specific upper limit of reimbursement has been established by the federal agency, in addition to writing "d a w" in the box provided for such purpose on the prescription form, payment under this title for such drug must be made under the provisions of subparagraph (ii) of such paragraph.

(d) In addition to the amounts paid pursuant to paragraph (b) of this subdivision, the department shall pay a professional pharmacy dispensing fee for each such drug dispensed in the amount of ten dollars and eight cents per prescription or written order of a practitioner; provided, however that this professional dispensing fee will not apply to drugs that are available without a prescription as required by section sixty-eight hundred ten of the education law but do not meet the definition of a covered outpatient drug pursuant to Section 1927K of the Social Security Act.

(e) For a multiple source generic drug for which no specific upper payment limit has been established by the federal centers for medicare and medicaid services, the commissioner of health may establish a maximum acquisition cost for such drug which shall be effective until such time as a specific federal upper payment limit has been established for such drug. The department shall use a similar methodology in establishing such an interim price as that utilized by the centers for medicare and Medicaid services in establishing the federal upper payment limit. For this purpose, the department is authorized to enter into a contract with an entity to provide technical and administrative support

to the commissioner of health.

(g) Notwithstanding any other provision of this subdivision to the contrary, the department is authorized to implement a specialty pharmacy program for the purpose of procuring certain specialty drugs at reduced cost. The department is authorized to enter into contracts with one or more contractors in order to obtain certain specialty drugs from a limited number of sources at reduced prices. For purposes of this paragraph, specialty drugs include, but are not limited to, chemotherapy agents, hydration therapy agents, pain therapy agents, intravenous administration of antibiotics or other drugs, and total parenteral nutrition. All contracts entered into by the department to effectuate the provisions of this section shall require the contractors to take steps to assure that drugs provided pursuant to such contracts will be readily accessible to consumers in a fashion that is no more restrictive than that which was in effect prior to the implementation of the specialty pharmacy program. This paragraph shall be effective only to the extent that federal financial participation is available in the cost of drugs obtained pursuant to this paragraph. The commissioner of health is authorized to submit amendments to the state plan for medical assistance and to submit applications for waivers under the social security act to obtain the federal approvals necessary to implement this paragraph. However, any pharmacy owned and operated by a not-for-profit organization solely for the purpose of providing drugs to individuals diagnosed with cystic fibrosis as part of a comprehensive clinical care program approved by the national organization that accredits cystic fibrosis care centers and maintains a national registry of cystic fibrosis clinical data shall be exempt from the specialty pharmacy program.

(h) The commissioner of health is authorized to establish a medication therapy management pilot program in one or more counties or regions of the state for the purpose of improving compliance with drug therapies and improving clinical outcomes. Payments under such program may be made to retail pharmacies for the provision of one-on-one medication regimen counseling services for persons determined by the commissioner to be eligible to receive such services. The commissioner is authorized to establish fees for such counseling services, subject to the approval of the director of the division of the budget. The provisions of this

paragraph shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of services provided under this paragraph.

(i)(i) The department of health shall establish a program for synchronization of medications. Under the synchronization program, a health care practitioner may prescribe a refill of one or more of the patient's medications for a shorter period than would ordinarily be provided, for the purpose of synchronizing refill dates of one or more of the patient's medications subject to the synchronization when it is agreed among the recipient, the health care practitioner and a pharmacist that synchronization of multiple prescriptions for the treatment of a chronic illness is in the best interest of the patient for the management or treatment of a chronic illness provided that the following apply to such medications:

(A) are covered by the department of health pursuant to this title;

(B) are used for treatment and management of a chronic illness that are subject to refills;

(C) are not a schedule II controlled substance, nor a schedule III controlled substance that contains hydrocodone or other opioid medication as scheduled in section thirty-three hundred six of the public health law, or a controlled substance under the federal Controlled Substances Act;

(D) meet all prior authorization criteria specific to the medications at the time of the synchronization request;

(E) are of a formulation that can be effectively and lawfully aligned over required short fill periods to achieve synchronization; and

(F) do not have quantity limits or dose optimization criteria or state or federal requirements that would be violated in fulfilling synchronization.

(ii) The department of health shall not deny coverage for the dispensing of a medication by a pharmacy for a partial supply when it is for the purpose of synchronizing the patient's medications. When applicable to permit synchronization, the department of health shall allow a pharmacy to override any denial codes indicating that a prescription is being refilled too soon for the purposes of medication synchronization.

(iii) The dispensing fee paid to the pharmacy contracted to provide services pursuant to this section for a partial supply associated with medication synchronization shall be paid in accordance with the Medicaid state plan as approved by the Centers for Medicare and Medicaid Services.

(iv) The requirement of this paragraph applies only once for each prescription drug subject to medication synchronization except when either of the following occurs:

(I) the prescriber changes the dosage or frequency of administration of the prescription drug subject to a medication synchronization; or

(II) the prescriber prescribes a different drug.

(v) Nothing in this paragraph shall be deemed to require health care practitioners and pharmacists to synchronize the refilling of multiple prescriptions for a recipient.

(vi) The provisions of this paragraph are subject to compliance with all applicable federal and state laws and regulations, including the Centers for Medicare and Medicaid Services approved Medicaid state plan. The commissioner shall apply for waivers and submit state Medicaid plan amendments as are necessary to implement the program for synchronization of medications.

* NB Effective until March 31, 2029

* 9. Notwithstanding any inconsistent provision of law or regulation to the contrary, for those drugs which may not be dispensed without a prescription as required by section sixty-eight hundred ten of the education law and for which payment is authorized pursuant to paragraph (g) of subdivision two of section three hundred sixty-five-a of this title, payments under this title shall be made at the following amounts:

(a) for drugs provided by medical practitioners and claimed separately by the practitioners, the actual cost of the drugs to the practitioners; and

(b) for drugs dispensed by pharmacies:

(i) if the drug dispensed is a multiple source prescription drug for which an upper limit has been set by the federal health care financing administration, an amount equal to the specific upper limit set by such federal agency for the multiple source prescription drug, and

(ii) if the drug dispensed is a multiple source prescription drug or a brand-name prescription drug for which no specific upper limit has been

set by such federal agency, the lower of the estimated acquisition cost of such drug to pharmacies, or the dispensing pharmacy's usual and customary price charged to the general public. Estimated acquisition cost means the average wholesale price of a prescription drug based upon the package size dispensed from, as reported by the prescription drug pricing service used by the department, less ten percent thereof, and updated monthly by the department.

(c) Notwithstanding subparagraph (i) of paragraph (b) of this subdivision, if a qualified prescriber certifies "brand medically necessary" or "brand necessary" in his or her own handwriting directly on the face of a prescription for a multiple source drug for which a specific upper limit of reimbursement has been established by the federal agency, in addition to writing "d a w" in the box provided for such purpose on the prescription form, payment under this title for such drug must be made under the provisions of subparagraph (ii) of such paragraph.

(d) In addition to the amounts paid pursuant to paragraph (b) of this subdivision to pharmacies for those drugs which may not be dispensed without a prescription, as required by section sixty-eight hundred ten of the education law and for which payment is authorized pursuant to paragraph (g) of subdivision two of section three hundred sixty-five-a of this title, the department shall pay a pharmacy dispensing fee for each such prescription drug dispensed, which dispensing fee shall not be less than the following amounts:

(i) for prescription drugs categorized as generic by the prescription drug pricing service used by the department, five dollars and fifty cents per prescription; and

(ii) for prescription drugs categorized as brand-name prescription drug by the prescription drug pricing service used by the department, four dollars and fifty cents per prescription.

* NB Effective March 31, 2029

10. Any provider except for those providers certified under article twenty-eight of the public health law, of ordered services or supplies under the medical assistance program may be required to provide financial security to assure that funds are available to repay any overpayments made to the provider under this title and to assure the

financial security of the medical assistance program. For the purposes of this subdivision, "ordered services or supplies" shall mean those services or supplies described in paragraphs (g), (i) and (j) of subdivision two of section three hundred sixty-five-a of this title.

(a) Any financial security required by this subdivision must meet the requirements of this paragraph. Financial security may be provided through a bond with a corporate surety, from a company authorized to do business in this state, or an irrevocable letter of credit or certificate of deposit from a New York state or federally chartered bank, trust company, savings bank or savings and loan association qualified to do business in New York state and insured by the federal deposit insurance corporation.

(b) The bond, letter of credit or certificate of deposit shall be payable in favor of the people of the state of New York for the purpose of indemnifying the medical assistance program against any overpayments made to the provider.

(c) The bond, letter of credit or certificate of deposit filed and maintained pursuant to this section shall not be cancelled, revoked or terminated except after notice to, and with the consent of, the department at least forty-five days in advance of such cancellation, revocation or termination.

(d) The department may bring and maintain an action against the provider and the surety or bank, trust company, savings bank or savings and loan association for any claimed overpayments made to the provider.

(e) Financial security shall not be required for providers which do not submit claims for payment under the medical assistance program exceeding five hundred thousand dollars per annum or forty-two thousand dollars per month.

(f) Financial security shall be in an amount equal to the provider's estimated claims for payment for a one year period and may be adjusted bi-annually in accordance with the dollar amount of claims actually submitted. If the commissioner is satisfied from an investigation of the financial condition of a provider that the provider is solvent and possessed of sufficient assets to provide reasonable assurance of recovery of any overpayments, the commissioner may modify the amount of financial security to be provided by such provider.

(g) Financial security must be submitted by a provider upon initial

application for enrollment as a provider of medical assistance and with each subsequent enrollment. A change in ownership of a provider shall not release, cancel or terminate liability under this section under any bond, letter of credit or certificate of deposit filed for a provider while such bond, letter of credit or certificate of deposit is in effect unless the transferee, purchaser, successor or assignee of such provider obtains a bond, letter of credit or certificate of deposit under this section for the benefit of such new owner. All providers enrolled in the medical assistance program on the effective date of this subdivision will be required to submit financial security within ninety days of notice of such requirements by the department.

(h) The department may make the submission of the financial security required by this subdivision a condition of participation in the medical assistance program.

11. (a) Any inconsistent provisions of this title or other law notwithstanding, no health insurer, self-insured plan, managed care organization, pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, employer or organization who has a plan, including an employee retirement income security act or service benefit plan, providing care and other medical benefits for persons, whether by insurance or otherwise, shall exclude a person from eligibility, coverage or entitlement to medical benefits by reason of the eligibility of such person for medical assistance under this title, or by reason of the fact that such person would, except for such plan, be eligible for benefits under this title.

(b) Any inconsistent provisions of this title or other law notwithstanding, no insurer may impose requirements on the department or a social services district which has been assigned the rights of an individual who is eligible for medical assistance under this title and who is covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(c) Any inconsistent provisions of this title or other law notwithstanding, the department may, to the extent necessary to reimburse the department and the social services districts for

expenditures under this title, certify to the commissioner of taxation and finance pursuant to section one hundred seventy-one-f of the tax law amounts to be withheld from tax refunds otherwise due to any individual who is required by court order to provide medical support in the form of health insurance benefits for a child who is eligible for medical assistance under this title and who has received payment from a third-party for the cost of such services for such child but has not used such payments to reimburse either the other parent or guardian of such child or the provider of such services or the appropriate social services district; provided however, that any claims for current or past-due child support shall take priority over any such claims for the costs of such services and care. Such amounts shall be withheld pursuant to section one hundred seventy-one-f of the tax law, and shall be credited to unreimbursed medical assistance incurred on behalf of such child. The department shall by regulation establish procedures consistent with paragraphs (a) and (b) of subdivision four of section one hundred seventy-one-c of the tax law by which any individual who is the subject of a certification may contest such certification.

12. Prior to receiving medical assistance under subparagraphs five and six of paragraph (c) of subdivision one of section three hundred sixty-six of this title, a person whose net available income is at least one hundred fifty percent of the applicable federal income official poverty line, as defined and updated by the United States department of health and human services, must pay a monthly premium, in accordance with a procedure to be established by the commissioner. The amount of such premium shall be twenty-five dollars for an individual who is otherwise eligible for medical assistance under such subparagraphs, and fifty dollars for a couple, both of whom are otherwise eligible for medical assistance under such subparagraphs. No premium shall be required from a person whose net available income is less than one hundred fifty percent of the applicable federal income official poverty line, as defined and updated by the United States department of health and human services.

§ 367-b. Medical assistance information and payment system. 1. The

department shall design and implement a statewide medical assistance information and payments system for the purpose of providing individual and aggregate data to social services districts to assist them in making basic management decisions, to the department and other state agencies to assist in the administration of the medical assistance program, and to the governor and the legislature as may be necessary to assist in making major administrative and policy decisions affecting such program. Such system shall be designed so as to be capable of the following:

a. receiving and processing information relating to the eligibility of each person applying for medical assistance and of issuing a medical assistance identification card to persons determined by a social services official to be eligible for such assistance;

b. receiving and processing information relating to each qualified provider of medical assistance furnishing care, services or supplies for which claims for payment are made pursuant to this title;

c. receiving and processing, in a form and manner prescribed by the department, all claims for medical care, services and supplies, and making payments for valid claims to providers of medical care, services and supplies on behalf of social services districts;

d. maintaining information necessary to allow the department, consistent with the powers and duties of the department of health, to review the appropriateness, scope and duration of medical care, services and supplies provided to any eligible person pursuant to this chapter; and

e. initiating implementation of such a system for the district comprising the city of New York, in a manner compatible with expansion of such system to districts other than the district comprising the city of New York.

2. Consistent with the capabilities of the system established pursuant to subdivision one of this section, the department shall assume payment responsibilities on behalf of social services districts by promulgation

of regulations approved by the director of the budget. Such regulations shall specify the providers of medical assistance and the medical care, services and/or supplies for the district or districts for which the department will assume payment responsibilities and the date on which such responsibilities shall be assumed. Such regulations shall be published for comment at least thirty days in advance of their promulgation and shall be filed with the secretary of state at least sixty days in advance of the date of assumption of responsibilities; provided, however, that with respect to a particular district the requirements for advance publications and/or filing may be waived, or the time limits reduced, with the written consent of the district to such waiver or reduction. Providers of medical care and services shall submit claims to the social services district for all items of care, services and supplies furnished prior to the date of state assumption of payment responsibilities and to the state for all such items furnished subsequent to such date. Such regulations shall also specify a final transition date after which any claiming submitted shall be enforceable by such provider only against the state and shall not be enforceable by such provider against the social services district; provided, however, that the department and the district may enter into a written agreement by which the department agrees on the basis of eligibility information provided by such district to pay claims submitted to such district prior to the final transition date.

3. Upon notice to a social services district in accordance with subdivision two, that the department intends to assume payment responsibilities on behalf of such district, (a) such district shall promptly submit to the department requested information regarding each person who applies for or has been determined eligible for medical assistance and each provider of medical assistance in such district; and (b) notwithstanding the provisions of paragraph (b) of subdivision three of section three hundred sixty-six-a of this chapter, the department shall provide each person found by such district to be eligible for medical assistance under this title with a medical assistance identification card.

4. Information relating to persons applying for or receiving medical

assistance shall be considered confidential and shall not be disclosed to persons or agencies other than those considered entitled to such information in accordance with section one hundred thirty-six when such disclosure is necessary for the proper administration of public assistance programs.

5. By no later than forty-five days following the end of each calendar quarter after the second quarter of calendar year nineteen hundred seventy-six, the department shall, until full implementation has been achieved in all social services districts, report to the governor and the legislature regarding the current status of the medical assistance information and payment system, summarizing the progress achieved during the previous quarter and the anticipated major achievements of the succeeding two calendar quarters. The report shall include the current and anticipated overall expenditure and staffing levels for functions relating to the system, and shall specify each district affected or anticipated to be affected during the succeeding two calendar quarters and summarize the manner in which each such district is, or is anticipated to be, affected. In addition, the department shall prepare and submit to the governor and the legislature a special report demonstrating the appropriateness and relative cost-effectiveness of utilizing a fiscal intermediary.

In addition, for the purpose of insuring the compatability of the system servicing the district comprising the city of New York with the system servicing all other social services districts in the state, the department shall prepare and submit to the governor and the legislature on or before March first, nineteen hundred seventy-eight, a special report and recommendation covering the appropriateness and relative cost effectiveness of utilizing a fiscal intermediary or fiscal agent for all districts other than the district comprising the city of New York.

6. Each social services district shall be responsible for paying to the state a share of the state's expenditures for claims of providers of medical assistance attributable to such district, which shall be equal to the share of such expenditures such district would have borne after reimbursement from state and federal funds in accordance with section

three hundred sixty-eight-a of this chapter, had the expenditure been made by such district; provided, however, that no district shall be responsible for the state's expenditures for the administrative costs of developing, maintaining or operating the statewide medical assistance information and payment system; and provided, further, that no district shall be responsible for paying to the state any portion of the cost of medical assistance which the department is responsible for furnishing pursuant to section three hundred sixty-five of this chapter.

7. In any case in which the department has made payments for medical assistance on behalf of a social services district pursuant to this section, the commissioner on behalf of the social services official shall be empowered to bring actions to recover the cost of such assistance, pursuant to this subdivision and the provisions of title six of article three of this chapter.

8. (a) For the purpose of orderly and timely implementation of the medical assistance information and payment system, the department is hereby authorized to enter into agreements with fiscal intermediaries or fiscal agents for the design, development, implementation, operation, processing, auditing and making of payments, subject to audits being conducted by the state in accordance with the terms of such agreements, for medical assistance claims under the system described by this section in any social services district. Such agreements shall specifically provide that the state shall have complete oversight responsibility for the fiscal intermediaries' or fiscal agents' performance and shall be solely responsible for establishing eligibility requirements for recipients, provider qualifications, rates of payment, investigation of suspected fraud and abuse, issuance of identification cards, establishing and maintaining recipient eligibility files, provider profiles, and conducting state audits of the fiscal intermediaries' or agents' at least once annually. The system described in this subdivision shall be operated by one or more fiscal intermediaries or fiscal agents in accordance with this subdivision unless the department is otherwise authorized by a law enacted subsequent to the effective date of this subdivision to operate the system in another manner. In no event shall such intermediary or agent be a political subdivision of the state or

any other governmental agency or entity. Notwithstanding the foregoing, the department may make payments to a provider upon the commissioner's determination that the provider is temporarily unable to comply with billing requirements. The department shall consult with the office of Medicaid inspector general regarding any activities undertaken by the fiscal intermediaries or fiscal agents regarding investigation of suspected fraud and abuse.

(b) The department of health, in consultation with the office of Medicaid inspector general, shall develop, test and implement new methods to strengthen the capability of the medical assistance information and payment system to detect and control fraud and improve expenditure accountability, and is hereby authorized to enter into further agreements with fiscal and/or information technology agents for the development, testing and implementation of such new methods. Any such agreements shall be with agents which have demonstrated expertise in the areas addressed by the agreement. Such methods shall, at a minimum, address the following areas:

(1) Prepayment claims review. Develop, test and implement an automated claims review process which, prior to payment, shall subject medical assistance program services claims to review for proper coding and such other review as may be deemed necessary. Services subject to review shall be based on: the expected cost-effectiveness of reviewing such service; the capabilities of the automated system for conducting such a review; and the potential to implement such review with negligible effect on the turnaround of claims for provider payment or on recipient access to necessary services. Such initiative shall be designed to provide for the efficient and effective operation of the medical assistance program claims payment system by performing functions including, but not limited to, capturing coding errors, misjudgments, incorrect or multiple billing for the same service and possible excesses in billing or service use, whether intentional or unintentional.

(2) Coordination of benefits. Develop, test and implement an automated process to improve the coordination of benefits between the medical assistance program and other sources of coverage for medical assistance recipients. Such initiative shall initially examine the savings potential to the medical assistance program through retrospective review of claims paid which shall be completed not later than January

thirty-first, two thousand seven. If, based upon such initial experience, the Medicaid inspector general deems the automated process to be capable of including or moving to a prospective review, with negligible effect on the turnaround of claims for provider payment or on recipient access to services, then the Medicaid inspector general in subsequent tests shall examine the savings potential through prospective, pre-claims payment review.

(3) Comprehensive review of paid claims. Take all reasonable and necessary actions to intensify the state's current level of monitoring, analyzing, reporting and responding to medical assistance program claims data maintained by the state's medical assistance information and payment system contract agents. Pursuant to this initiative, the department of health, in collaboration with the office of Medicaid inspector general, shall make efforts to improve the utilization of such data in order to better identify fraud and abuse within the medical assistance program and to identify and implement further program and patient care reforms for the improvement of such program. In addition, the department of health, in consultation with such contract agents and the office of Medicaid inspector general, shall identify additional data elements that are maintained and otherwise accessible by the state, directly or through any of its contractors, that would, if coordinated with medical assistance data, further increase the effectiveness of data analysis for the management of the medical assistance program. To further the objectives of this subparagraph, the department of health, in collaboration with the office of Medicaid inspector general, shall provide or arrange in-service training for state and county medical assistance personnel to increase the capability for state and local data analysis, leading to a more cost-effective operation of the medical assistance program.

(4) Targeted claims and utilization review. Develop, test and implement an automated process for the targeted review of claims, services and/or populations not later than January thirty-first, two thousand seven. Such review shall be for the purposes of identifying statistical aberrations in the use or billing of such services and for assisting in the development and implementation of measures to ensure that service use and billing are appropriate to recipients' needs.

(c) The commissioner of health shall prepare and submit an interim

report to the governor and legislature on the implementation of the initiatives specified in paragraph (b) of this subdivision no later than December first, two thousand seven. Such report shall also include recommendations for any revisions that would further facilitate the goals of such paragraph, including recommendations for expansion. In addition, the commissioner of health shall submit a final report not later than December first, two thousand eight. In preparing such interim and final reports, the commissioner of health shall consult with the Medicaid inspector general, third-party agents, providers and recipients associated with the implementation of paragraph (b) of this subdivision.

9. (a) In order to accomplish a more orderly transition to the medical assistance information and payment system authorized by this section, and to continue for a limited transition period the rate at which advanced revenues have been made available by local governmental units to certain hospitals providing services to persons eligible for medical assistance, the department is authorized to promulgate regulations establishing a system of accelerated payments to hospitals meeting the criteria set forth in this section.

(b) Such system of accelerated payments shall only be available to a general hospital, other than a public general hospital:

(i) which prior to January first, nineteen hundred seventy-eight received regular, periodic and recurring advanced revenues from a local governmental unit, the amount of which was based on anticipated medical assistance claims payments; and

(ii) which has demonstrated that its continued financial viability depends in substantial part on the rate at which such advanced revenues were made available by local governmental units prior to the time the department, pursuant to this section, assumed payment for such hospital responsibilities on behalf of the social services district in which it is located, taking into account any funds remaining available from the local governmental unit under its system of advanced revenues. For purposes of this subdivision, it shall be presumed that a hospital does not depend in substantial part on the rate at which advanced revenues were made available by a local governmental unit if it received such revenues for a period of less than nine months preceding the month in which the department assumed payment responsibilities for such hospital;

(iii) for which payment responsibility is initially assumed by the department pursuant to this section during the period beginning June first, nineteen hundred seventy-eight and ending November thirtieth, nineteen hundred seventy-eight; and

(iv) which meets performance criteria established by department regulation relating to the ratio of acceptable claims for patient days submitted for medical assistance payment compared to the total patient days of the hospital and compared to such claims submitted in one or more previous months, and the time lapse between the date the service was provided and the date the claim was submitted.

(c) The regulations promulgated by the department pursuant to paragraph (a) of this subdivision shall provide that the amount of the accelerated payment for any month shall be determined for each hospital meeting the criteria set forth in this section on the basis of acceptable medical assistance claims submitted by the hospital in one or more previous months and the amount of accelerated revenues made available to the hospital by a local governmental unit prior to the time the department assumed payment responsibilities for the hospital. The amount of the accelerated payment for any given month shall not exceed the amount of a monthly aggregate claim to be submitted by the hospital to the department, which claim shall reflect items of care, services and supplies authorized under the medical assistance program pursuant to this title which are in fact provided prior to the date of the aggregate claim to persons who have been determined eligible for medical assistance, or based on the past performance of the hospital are likely to be determined eligible for medical assistance, when no other source of payment including third party health insurance and payments pursuant to title eighteen of the Federal Social Security Act are available for such items of care, service and supplies. Such aggregate claims shall be subject to the audit and warrant of the state comptroller.

(d) Any schedule of accelerated payments established by the department pursuant to this section shall assure that such payments are made for a period of no more than six months from the month in which the department assumes payment responsibility for the hospital, and shall provide for repayment of any amounts in excess of current audited claims, through reductions in current claims, at a rate that will assure full repayment at the earliest time consistent with the purposes of this section, but

in no event more than twenty-four months following the month in which the department assumes payment responsibilities for the hospital. However, where the commissioner of health has determined with the concurrence of the state hospital review and planning council that a hospital has satisfied the department of health regulations and is or has been authorized to participate in the emergency hospital reimbursement program pursuant to which repayment of all or part of any accelerated payments made by the department have been deferred in accordance with such regulations, notwithstanding the time limitations set forth above repayment of such deferred amounts shall be made in accordance with an orderly schedule of repayment established by the commissioner of health after consultation with the commissioner. In no event shall any reduction be made against current claims, grant funds or any amounts due said hospital in settlement of rate appeals, claims or lawsuits to satisfy such repayment obligations.

(e) In making accelerated payments pursuant to this subdivision and department regulations, the department shall utilize federal funds made available, and local funds, for such purposes or for purposes of payment by the department of medical assistance payments pursuant to this section.

* 10. a. For the purpose of timely payment, the department is hereby authorized to develop a concurrent payment system for general hospitals which elect to participate in the concurrent payment system and which are included in the payment component of the medical assistance information and payment system, and to promulgate regulations to govern such a system. The department may implement the concurrent payment system for any general hospital which has elected to participate and for which the department has chosen to implement the system.

b. For all participating general hospitals the department shall determine a biweekly concurrent payment which shall equal one twenty-sixth of the portion of the hospital's imputed or certified inpatient revenue cap (as defined in section twenty-eight hundred seven-a of the public health law) allocated for medical assistance payments. The concurrent payment shall be reviewed at the beginning of each quarter and adjusted to reflect any changes to the inpatient revenue cap or portion allocated for medical assistance payments.

c. The department shall promulgate regulations, consistent with federal requirements for participation, governing the concurrent payment system. The regulations shall address, among other things, the method of calculating the concurrent payment, the method of reconciliation, the adjustment of the concurrent payment for the calculated difference, the manner of eliminating underpayments or overpayments to hospitals in exceptional circumstances such as significantly changing utilization, changes in bed or service capacity, or imminent insolvency. The department shall promulgate regulations establishing a procedure for recognizing open cases as of the date of reconciliation. The department shall also promulgate regulations setting forth standards for the timeliness and quality of billings and may lower the concurrent payment calculated in accordance with paragraph b of this subdivision for noncompliance with such regulations.

d. Any payment claims made to the department for days of inpatient care provided prior to the effective date of this subdivision shall be paid or denied in accordance with department regulations in effect when the care was provided.

e. For any general hospital which is not afforded the opportunity of participating in the concurrent payment system and which is in compliance with the billing requirements of the department, the department shall pay any financing or working capital charge levied by the hospital as authorized in section twenty-eight hundred seven-a of the public health law.

f. This subdivision shall be effective only if federal participation is available.

* NB Expires January 1, 1986

11. a. For the purpose of timely payment, the department is hereby authorized to develop a concurrent payment system for general hospitals which elect to participate in the concurrent payment system and which are included in the payment component of the medical assistance information and payment system, and to promulgate regulations to govern

such a system. The department may implement the concurrent payment system for any general hospital which has elected to participate and for which the department has chosen to implement the system.

b. For all participating general hospitals the department shall determine a biweekly concurrent payment which shall equal one twenty-sixth of the hospital's estimated yearly inpatient revenue from medical assistance payments. The concurrent payment shall be reviewed at the beginning of each quarter and adjusted to reflect any changes to the rates for medical assistance payments.

c. The department shall promulgate regulations, consistent with federal requirements for participation, governing the concurrent payment system. The regulations shall address, among other things, the method of calculating the concurrent payment, the method of reconciliation, the adjustment of the concurrent payment for the calculated difference, the manner of eliminating underpayments or overpayments to hospitals in exceptional circumstances such as significantly changing utilization, changes in bed or service capacity, or imminent insolvency. The department shall promulgate regulations establishing a procedure for recognizing open cases as of the date of reconciliation. The department shall promulgate regulations setting forth standards for the timeliness and quality of billings and may lower the concurrent payment calculated in accordance with paragraph b of this subdivision for noncompliance with such regulations.

d. Any payment claims made to the department for days of inpatient care provided prior to the effective date of this subdivision shall be paid or denied in accordance with department regulations in effect when the care was provided.

e. For any general hospital which is not afforded the opportunity of participating in the concurrent payment system and which is in compliance with the billing requirements of the department, the department shall pay any financing or working capital charge levied by the hospital as authorized in section twenty-eight hundred seven-a of the public health law.

f. This subdivision shall be effective only if federal participation is available.

12. (a) For the purpose of regulating cash flow for general hospitals, the department shall develop and implement a payment methodology to provide for timely payments for inpatient hospital services eligible for case based payments per discharge based on diagnosis-related groups provided during the period January first, nineteen hundred eighty-eight through March thirty-first two thousand twenty-nine, by such hospitals which elect to participate in the system.

(b) In developing a payment methodology the department shall consider a system under which hospitals may be reimbursed on the basis of inpatient admissions, adjusted to payment on the basis of discharge data, with reconciliations established at time periods specified by the department. Under such a system variances between amounts paid on an admission basis and actual amounts due and to be paid on a discharge basis may be reflected in the amounts to be paid in a subsequent period.

13. Notwithstanding any inconsistent provision of law, in lieu of payments authorized by this chapter and/or any of the general fund or special revenue other appropriations made to the office of temporary and disability assistance and the office of children and family services, from funds otherwise due to local social services districts or in lieu of payments of federal funds otherwise due to local social services districts for programs provided under the federal social security act or the federal food stamp act or the low income home energy assistance program, funds in amounts certified by the commissioner of the office of temporary and disability assistance or the commissioner of the office of children and family services or the commissioner of health as due from local social services districts as their share of payments made pursuant to this section, may be set-aside by the state comptroller in an interest-bearing account with such interest accruing to the credit of the locality, pursuant to an estimate provided by the commissioner of health of a local social services district's share of medical assistance payments, except that in the case of the city of New York, such set-aside shall be subject first to the requirements of a section of the

chapter of the laws of two thousand one which enacted this provision, and then subject to the requirements of paragraph (i) of subdivision (b) of section two hundred twenty-two-a of chapter four hundred seventy-four of the laws of nineteen hundred ninety-six prior to the application of this subdivision. Should funds otherwise payable to a local social services district from appropriations made to the office of temporary and disability assistance, the office of children and family services, and the department of health be insufficient to fully fund the amounts identified by the commissioner of health as necessary to liquidate the local share of payments to be made pursuant to this section on behalf of the local social services district, the commissioner of health may identify other state or federal payments payable to that local social services district or any other county agency including, but not limited to the county department of health, from appropriations made to the state department of health, and may authorize the state comptroller, upon no less than five days written notice to such local social services district or such other county agency, to set-aside such payments in the interest-bearing account with such interest accruing to the credit of the locality. Upon such determination by the commissioner of health that insufficient funds are payable to a local social services district and any other county agency receiving payments from the office of temporary and disability assistance, the office of children and family services, and the state department of health from appropriations made to these agencies, the state comptroller shall, upon no less than five days written notice to such local social services district or such other county agency, withhold payments from any of the general fund - local assistance accounts or payments made from any of the special revenue - federal local assistance accounts, provided, however, that such federal payments shall be withheld only after such federal funds are properly credited to the county through vouchers, claims or other warrants properly received, approved, and paid by the state comptroller, and set-aside such disbursements in the interest-bearing account with such interest accruing to the credit of the locality until such time that the amount withheld from each county is determined by the commissioner of health to be sufficient to fully liquidate the local share of payments, as estimated by the commissioner of health, to be made pursuant to this section on behalf of that local social services district.

14. Notwithstanding any other provision of law, effective on or before January first, two thousand one, the local social services district share of medical assistance payments made by the state on behalf of the local social services district shall be paid to the state by the local social services district using electronic funds transfer under the supervision of the state comptroller and pursuant to rules and regulations of the commissioner of health. The state comptroller shall deposit such funds in the medicaid management information system statewide escrow fund to the credit of each local district. In the event that the state comptroller and commissioner of health determine that there are insufficient funds available from the local district to liquidate their local share of medical assistance payments, the commissioner of health shall issue a repayment schedule to the state comptroller for purposes of reducing reimbursement from other sources of payment from the state to the city or county of which the local social services district is a part in accordance with subdivision thirteen of this section, until the amounts due from the local district are recovered in full plus any interest that would have otherwise accrued to the fund had such fund had sufficient balances from the local district. Upon determination by the state comptroller that insufficient sources of payment are available to fully liquidate the local social services district share of medical assistance payments, the commissioner of health shall include in such schedule a charge to the county equal to the amount of interest otherwise earned by the state short-term interest pool, plus any interest penalty as the commissioner of health may determine, until such time as the district has fully liquidated its liability pursuant to the provisions of this chapter.

§ 367-c. Payment for long term home health care programs. 1. If a long term home health care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, the local social services official, before he authorizes care in a nursing home or intermediate care facility for a person eligible to receive services under this title, shall notify the person in writing of the provisions of this section.

2. If a person eligible to receive services under the provisions of this title who requires care, treatment, maintenance, nursing or other services in a nursing home desires to remain and is deemed by his physician able to remain in his own home or the home of a responsible relative or other responsible adult if the necessary services are provided, such person or his representative shall so inform the local social services official. If a long term home health care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, such official shall authorize an assessment under the provisions of section thirty-six hundred sixteen of the public health law. If the results of the assessment indicate that the person can receive the appropriate level of care at home, the official shall prepare for that person a plan for the provision of services comparable to those that would be rendered in a nursing home. In developing such plan, the official shall consult with those persons performing the assessment. The services shall be provided by a certified home health agency, hospital, or residential health care facility authorized by the commissioner of health under article thirty-six of the public health law to provide a long term home health care program. At the time of the initial assessment, and at the time of each subsequent assessment performed under the provisions of section thirty-six hundred sixteen of the public health law, or more often if the person's needs require, the official shall establish a monthly budget in accordance with which he shall authorize payment for the services provided under such plan. Total monthly expenditures made under this title for such person shall not exceed a maximum of seventy-five per cent, or such lesser percentage as may be determined by the commissioner, of the average of the monthly rates payable under this title for nursing home services within the social services district for which the official has authority. However, if a continuing assessment of the person's needs demonstrates that he requires increased services, the social services official may authorize the expenditure of any amount accrued under this section during the past twelve months as a result of the expenditures for that person not exceeding such maximum. If an assessment of the person's needs demonstrates that he requires services the payment for which would exceed such monthly maximum, but it can be

reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one year period, the social services official may authorize payment for such services.

3. If a person eligible to receive services under the provisions of this title who requires health related care and services in an intermediate care facility desires to remain and is deemed by his physician able to remain in his own home or the home of a responsible relative or other responsible adult if the necessary services are provided, such person or his representative shall so inform the local social services official. If a long term home health care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, such official shall authorize an assessment under the provisions of section thirty-six hundred sixteen of the public health law. If the results of the assessment indicate that the person can receive the appropriate level of care at home, the official shall prepare for that person a plan for the provision of services comparable to those that would be rendered in an intermediate care facility. In developing such plan, the official shall consult with those persons performing the assessment. The services shall be provided by a certified home health agency, hospital, or residential health care facility authorized by the commissioner of health under article thirty-six of the public health law to provide a long term home health care program. At the time of the initial assessment and at the time of each subsequent assessment performed under the provisions of section thirty-six hundred sixteen of the public health law, or more often if the person's needs require, the official shall establish a monthly budget in accordance with which he shall authorize payment for the services provided under that plan. Total monthly expenditures made under this title for such person shall not exceed a maximum of seventy-five per cent, or such lesser percentage as may be determined by the commissioner, of the average of the monthly rates paid under this title for the provision of health related care and services in intermediate care facilities within the social services district for which the official has authority. However, if a continuing assessment of the person's needs demonstrates that he requires increased services, the

social services official may authorize the expenditure of any amount accrued under this section during the past twelve months as a result of the expenditures for that person not exceeding such maximum. If an assessment of the person's needs demonstrates that he requires services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one year period, the social services official may authorize payment for such services.

3-a. (a) Notwithstanding any inconsistent provision of this section, the commissioner is authorized and directed to establish a demonstration program for the purpose of determining the impact of raising the limitation on expenditures for the delivery of long term home health care services to persons with special needs as defined in this subdivision. Pursuant to such program, the commissioner shall permit local social services officials to authorize, at their discretion, and only after a determination that the maximum expenditure available pursuant to subdivisions two and three of this section is not sufficient to provide or continue to provide long term home health care services to persons with special needs, maximum monthly expenditures for services under this title to such persons, not to exceed one hundred percent of the average of the monthly rates payable under this title for services in a nursing home or intermediate care facility within the social services district for which the social services official has authority. However, if a continuing assessment of a person with special needs demonstrates that he requires increased services, the social services official may authorize the expenditure of any amount accrued under this section during the past twelve months as a result of the expenditures for that person not having exceeded such maximum. If an assessment of a person with special needs demonstrates that he requires increased services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one year period, the social services official may authorize payment for such services.

(b) As used in this subdivision, the term "person with special needs"

shall mean a person for whom a plan of care has been developed pursuant to subdivision two or three of this section who (1) needs care including but not limited to respiratory therapy, tube feeding, decubitus care or insulin therapy which cannot be appropriately provided by a personal care aide as defined in regulations issued by the commissioner, or (2) has one or more of the following conditions: mental disability as defined in section 1.03 of the mental hygiene law, acquired immune deficiency syndrome, or dementias, including Alzheimer's disease.

(c) The number of persons with special needs for whom a local social services official may authorize payment for services pursuant to paragraph (a) of this subdivision shall be limited to twenty-five percent of the total number of persons, all long term home health care programs, within a social services district are authorized to serve; provided, however, in any district containing a city having a population of one million or more, such limit shall be fifteen percent.

(d) In the event that a district reaches the limitation specified in paragraph (c) of this subdivision, the local social services official may, upon the approval of the commissioner, authorize payment for services, pursuant to paragraph (a) of this subdivision, for additional persons with special needs.

4. Notwithstanding any inconsistent provision of this section, if two members of this same household, eligible to receive services under this title, require care and services in either a nursing home or an intermediate care facility, and assessments conducted pursuant to the provisions of this section indicate that such persons can receive the appropriate level of care at home, then such care may be provided at home where total monthly expenditures made under this title for such persons shall not exceed a maximum of seventy-five percent, or such lesser percentage as may be determined by the commissioner, of the monthly rates which would be payable under this title for both members of the household for nursing home and/or intermediate care facility services within the social services district. If assessments of such persons' needs demonstrate that they require services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such persons will not exceed the maximum calculated over a one year period, a

social services official may authorize payment for such services.

5. If a person eligible to receive services under the provisions of this title who is medically eligible for care, treatment, maintenance, nursing or other services in a nursing home or is medically eligible for health related care and services in an intermediate care facility desires to and is deemed by his or her physician able to remain in an adult care facility, other than a shelter for adults, which is able and willing to retain such person if the necessary services are provided, such person or his or her representatives shall so inform the local social services official. If a long term home health care program is provided in a social services district, an official of such district shall authorize an assessment under the provisions of section three thousand six hundred sixteen of the public health law. If the results of the assessment indicate that the person can receive the appropriate level of care at such location, and meets the appropriate standards for continued stay for such facility as are established by law and regulation, such official shall prepare for that person a plan for the provision of services. In developing such plan, the official shall consult with those persons performing the assessment and with the operator of the adult care facility. The services shall be provided by a long term home health care program authorized pursuant to article thirty-six of the public health law, provided, however that notwithstanding the provisions of section three thousand six hundred sixteen of such law, services shall not be provided prior to the completion of the assessment. At the time of the initial assessment and at the time of each subsequent assessment performed under the provisions of section three thousand six hundred sixteen of the public health law, or more often if the person's needs require, the official shall establish a monthly budget in accordance with which he shall authorize payment for the services provided under that plan, provided, however that no services shall be authorized in the plan which the operator of the facility is required by law and regulation to provide. The long term home health care program providing services authorized in such plan shall be solely responsible for managing and providing or arranging for such authorized services. The operator of the adult care facility shall be solely responsible for managing and providing those services which

the facility is required by law or regulation to provide. However, the two entities shall collaborate to assure coordination. Total monthly expenditures made under this title for such person shall not exceed a maximum of fifty percent, or such lesser percentage as may be determined by the commissioner, of the average of the monthly rates paid under this title for the provision of nursing home services or health related care and services in intermediate care facilities, whichever is appropriate, within the social services district for which the official has authority. However, if a continuing assessment of the person's needs demonstrates that he or she requires increased services, the social services official may authorize the expenditure of any amount accrued under this section during the past twelve months as a result of the expenditures for that person not exceeding such maximum. If an assessment of the person's needs demonstrates that he or she requires services the payment for which would exceed such monthly maximum, but it can be reasonably anticipated that total expenditures for required services for such person will not exceed such maximum calculated over a one year period, the social services official may authorize payment for such services. The provisions of this subdivision shall not be deemed to alter standards for admission to an adult care facility nor shall the admission of a person into such facility be contingent on such person's enrollment in a long term home health care program.

6. Notwithstanding any inconsistent provision of law but subject to expenditure limitations of this section, the commissioner, subject to the approval of the state director of the budget, may authorize the utilization of medical assistance funds to pay for services provided by specified long term home health care programs in addition to those services included in the medical assistance program under section three hundred sixty-five-a of this chapter, so long as federal financial participation is available for such services. Expenditures made under this subdivision shall be deemed payments for medical assistance for needy persons and shall be subject to reimbursement by the state in accordance with the provisions of section three hundred sixty-eight-a of this chapter.

7. No social services district shall make payments pursuant to title

XIX of the federal Social Security Act for benefits available under title XVIII of such act without documentation that title XVIII claims have been filed and denied.

8. No social services district shall make payment for a person receiving a long term home health care program while payments are being made for that person for inpatient care in a residential health care facility or hospital.

9. The commissioner, together with the commissioner of health, shall submit a report to the governor, president pro tem of the senate and speaker of the assembly by the first day of February, nineteen hundred eighty, on the implementation of this section. Such report shall include a statement of the scope and status of long term home health care programs, the extent to which such programs have affected institutionalization, the costs associated with such programs, any recommendations for legislative action, and such other matters as may be pertinent.

10. This section shall be effective if, and as long as, federal aid is available therefor.

*** § 367-d. Personal care need determination.** The commissioner shall annually determine the statewide need for personal care services for all recipients except for those receiving personal care services pursuant to section three hundred sixty-seven-c of this article and for those recipients who are receiving personal care services and residing in family care homes or community residences as defined in subdivision twenty-eight-a of section 1.03 of the mental hygiene law certified by the office of mental health and the office of mental retardation and developmental disabilities. In determining such need the commissioner shall consider such factors as the population characteristics, poverty levels, the availability of informal support and other health care resources, related demographic data, and such other factors the commissioner deems pertinent for this purpose. The need for personal care services, as used in this section, shall be expressed in hourly

units of service and the total number of personal care service units established pursuant to this section shall be allocated to each social services district on the same basis as the statewide need is determined. Such allocations shall be in effect for the period April first through March thirty-first of the following year and shall be made available to each social services district prior to April first of each year, except that during calendar year nineteen hundred eighty-three, such allocations shall be made available within thirty days after enactment of this section but no earlier than April first. Within thirty days of receipt of a written request to the department made by a local social services commissioner the department shall provide all documentation used as the basis for determining aggregate statewide as well as their individual district allocations determined pursuant to this section.

* NB Expired March 31, 1985

§ 367-e. Payment for AIDS home care programs. 1. If an AIDS home care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, the local social services official, before he authorizes care in a nursing home or intermediate care facility or before he authorizes home health services or personal care services for a person eligible to receive services under this title, shall notify the person in writing of the provisions of this section.

2. If a person eligible to receive services under the provisions of this title desires to remain and is deemed by his physician able to remain in his own home or the home of a responsible relative or other responsible adult if the necessary services are provided, such person or his representative shall so inform the local social services official. If an AIDS home care program as defined under article thirty-six of the public health law is provided in the social services district for which he has authority, such official shall authorize an assessment under the provision of section three thousand six hundred sixteen of the public health law. If the results of the assessment indicate that the person can receive the appropriate level of care at home, the official shall prepare for that person a plan for the provision of services comparable

to those that would be rendered in a hospital or residential health care facility, as appropriate for the patient. In developing such plan, the official shall consult with those persons performing the assessment and shall assure that such plan is appropriate to the patient's needs and will result in an efficient use of services. The services shall be provided by a long term home health care program authorized by the commissioner of health under article thirty-six of the public health law to provide an AIDS home care program.

3. The commissioner shall apply for any waivers, including home and community based services waivers pursuant to section nineteen hundred fifteen-c of the social security act, necessary to implement AIDS home care programs. Notwithstanding any inconsistent provision of law but subject to expenditure limitations of this section, the commissioner, subject to the approval of the state director of the budget, may authorize the utilization of medical assistance funds to pay for services provided by AIDS home care programs in addition to those services included in the medical assistance program under section three hundred sixty-five-a of this chapter, so long as federal financial participation is available for such services. Expenditures made under this subdivision shall be deemed payments for medical assistance for needy persons and shall be subject to reimbursement by the state in accordance with the provisions of section three hundred sixty-eight-a of this chapter.

4. No social services district shall make payment for a person receiving an AIDS home care program while payments are being made for that person for inpatient care in a residential health care facility or hospital.

6. This section shall be effective if, and as long as, federal financial participation is available.

§ 367-f. Partnership for long term care program. 1. Definitions. As used in this section: (a) "Medicaid extended coverage" shall mean eligibility for medical assistance (i) without regard to the resource

requirements of section three hundred sixty-six of this title, or in the case of an individual covered under an insurance policy or certificate described in subdivision two of this section that provided a residential health care facility benefit less than two years in duration, without consideration of an amount of resources equivalent to the value of benefits received by the individual under such policy or certificate, as determined under the rules of the partnership for long-term care program; (ii) without regard to the recovery of medical assistance from the estates of individuals and the imposition of liens on the homes of persons pursuant to section three hundred sixty-nine of this title, with respect to resources exempt from consideration pursuant to subparagraph (i) of this paragraph; provided, however, that nothing in this section shall prevent the imposition of a lien or recovery against property of an individual on account of medical assistance incorrectly paid; and (iii) based on an income eligibility standard for married couples equal to the amount of the minimum monthly maintenance needs allowance defined in paragraph (h) of subdivision two of section three hundred sixty-six-c of this title, and for single individuals equal to one-half of such amount; provided, however, that the commissioner of health shall not be required to implement the provisions of this subparagraph if the use of such income eligibility standards will result in a loss of federal financial participation in the costs of Medicaid extended coverage furnished in accordance with subparagraphs (i) and (ii) of this paragraph.

(b) "Long term care services" shall include, but not be limited to care, treatment, maintenance, and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided by a home care services agency, certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the department of health; or provided by a personal care provider licensed or regulated by any other state or local agency; and such other services for which medical assistance is otherwise available under this chapter which are designated as long term care services in law or regulations of the department of health.

2. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the partnership for long term care program shall provide Medicaid extended coverage to a person receiving long term care services if there is federal participation pursuant to such treatment and such person: (a) is or was covered by an insurance policy or certificate providing coverage for long term care which meets the applicable minimum benefit standards of the superintendent of financial services and other requirements for approval of participation under the program; and, (b) has exhausted the coverage and benefits as required by the program.

3. Notwithstanding any inconsistent provision of this chapter or any other law to the contrary, the commissioner of health, in consultation with the superintendent of financial services and the director of the budget, may enter into reciprocal agreements with other states which administer partnership for long term care programs under which purchasers of policies in those states with comparable benefits to policies available in this state shall be eligible for Medicaid extended coverage in this state so long as purchasers of policies in this state with comparable benefits to policies available in such state or states shall be eligible for Medicaid extended coverage in such state or states.

§ 367-g. Authorization and provision of personal emergency response services. 1. Personal care services and home health services shall include, where appropriate as determined by the social services district, the provision of personal emergency response services and shared aide services pursuant to the provisions of subdivision two of section three hundred sixty-five-a of this chapter. For the purpose of this section, "personal emergency response services" shall mean (a) the provision and maintenance of electronic communication equipment in the home of an individual which signals a monitoring agency for help when activated by the individual, or after a period of time if a timer mechanism has not been reset, or by any other activating method; and (b) the continuous monitoring of such signals by a trained operator and, in case of receipt of such signal, the immediate notification of such

emergency response organizations or persons, if necessary, as the individual has previously specified.

2. The commissioner shall maintain standards for social services district's use and approval of personal emergency response services and shared aide services, which shall include, but need not be limited to department standards:

(a) for the personal emergency response system equipment used to ensure its reliability and appropriate design for the purpose;

(b) providing that use of personal emergency response services or shared aide services are part of a plan of care for the recipient that is based on the comprehensive assessment that such recipient has a medical condition, disability or impairment that warrants use of the service;

(c) requiring that the provider of the personal emergency response service have sufficient qualifications and expertise, adequate information on the client and the plan of care, and the capacity to provide timely information on calls received to the social services district or its designee;

(d) for coordination between the social services districts and the emergency response organization, as well as guidelines for regular updating of information on recipients receiving such service;

(e) with respect to appropriate supervision and safety for recipients receiving personal emergency response service or shared aide services;

(f) assuring that the assessment determines that the recipient can adequately utilize the personal emergency response system;

(g) assuring that personal emergency response services or shared aide services are medically appropriate, can meet the needs of the recipient for home care tasks, ensure the quality of the recipient's care and will not jeopardize the health or safety of the recipient;

(h) for determining the geographic appropriateness, in relation to staffing, of providing shared aide services and assuring that providers of home care services and districts consider the impact of the site selection on the staff who will be assigned to work at a shared aide site and that such staff, and any employee organization representing such staff where appropriate, are consulted with respect to the management and operation of a shared aide site;

(i) assuring that social services districts have a plan for providing information to consumers and their representatives concerning personal emergency response services and shared aide services, including information on how to express concerns about the service which they are receiving.

3. The department shall establish and issue the standards required under subdivision two hereof to social services districts on or before the first day of August of nineteen hundred ninety-five, after first seeking public comment thereon. The department, after consultation with representatives of social services districts, home health and personal care provider agencies and workers, providers of personal emergency response services and elderly or disabled persons who are receiving such services shall prepare a report to the governor and the legislature by April first, nineteen hundred ninety-six outlining any changes which are deemed appropriate to the standards for personal emergency response services and shared aide services which have been established by the department.

§ 367-h. Payment for assisted living programs. 1. Subject to the approval of the state director of the budget, the commissioner may authorize the payment of medical assistance funds for assisted living programs, as defined in section four hundred sixty-one-l of this chapter, in accordance with capitated rates of payment established pursuant to subdivision six of section thirty-six hundred fourteen of the public health law.

2. No assisted living program shall cease providing services to a medical assistance recipient solely because the cost of his or her care exceeds the amount of such capitated payments.

3. No medical assistance payments shall be made pursuant to this section while payments are also being made for inpatient care in a residential health care facility or hospital with respect to the same person.

4. This section shall be effective if, and as long as, federal financial participation is available for medical assistance expenditures made pursuant to it.

§ 367-i. Personal care services provider assessments. 1. Providers of personal care services, excepting those certified under article thirty-six of the public health law, are charged assessments on their gross receipts received from all personal care services and other operating income on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. Such assessments shall be submitted by or on behalf of such personal care services providers to the commissioner of health or his/her designee.

2. (a) The assessment shall be six-tenths of one percent of each such provider's gross receipts received from all personal care services and other operating income on a cash basis beginning January first, nineteen hundred ninety-one; provided, however, that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be two-tenths of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(b) Notwithstanding any contrary provisions of this section or any other contrary provision of law or regulation, the assessment shall be thirty-five hundredths of one percent of each such provider's gross receipts from all personal care services and other operating income on a cash basis for periods on and after April first, two thousand nine.

3. Gross receipts received from all personal care services and other operating income for purposes of the assessments pursuant to this section shall include, but not be limited to, all monies received for or on account of personal care services, provided, however, that subject to the provisions of subdivision eleven of this section income received from grants, charitable contributions, donations and bequests and governmental deficit financing shall not be included, and provided further, however, that moneys received from a certified home health agency or a provider of a long term home health care program assessed on

such moneys pursuant to section thirty-six hundred fourteen-a of the public health law shall not be included.

4. Estimated payments by or on behalf of such personal care services providers to the commissioner of health or his/her designee of funds due from the assessments pursuant to subdivision two of this section shall be made on a monthly basis. Estimated payments shall be due on or before the fifteenth day following the end of a calendar month to which an assessment applies.

5. (a) If an estimated payment made for a month to which an assessment applies is less than seventy percent of an amount the commissioner of health determines is due, based on evidence of prior period moneys received by a personal care services provider or evidence of moneys received by such personal care services provider for that month, the commissioner of health may estimate the amount due from such personal care services provider and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for a month to which an assessment applies is less than ninety percent of an amount the commissioner of health determines is due, based on evidence of prior period moneys received by a personal care services provider or evidence of moneys received by such personal care services provider for that month, and at least two previous estimated payments within the preceding six months were less than ninety percent of the amount due, based on similar evidence, the commissioner of health may estimate the amount due from such personal care services provider and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of health of a provider's deficiency under this section, the comptroller or a fiscal intermediary designated by the director of the budget, or the commissioner of social services, or a corporation organized and operating in accordance with article forty-three of the insurance law, or an organization operating in accordance with article forty-four of the public health law shall withhold from the amount of any payment to be made by the state or by such article forty-three corporation or article forty-four organization to the provider the amount of the

deficiency determined under paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision six of this section. Upon withholding such amount, the comptroller or a designated fiscal intermediary, or the commissioner of social services, or corporation organized and operating in accordance with article forty-three of the insurance law or organization operating in accordance with article forty-four of the public health law shall pay the commissioner of health, or his designee, such amount withheld on behalf of the provider.

(d) The commissioner of health shall provide a provider with notice of any estimate of an amount due for an assessment pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision six of this section at least three days prior to collection of such amount by the commissioner of health. Such notice shall contain the financial basis for the commissioner of health's estimate.

(e) In the event a provider objects to an estimate by the commissioner of health pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision six of this section of the amount due for an assessment, the provider, within sixty days of notice of an amount due, may request a public hearing. If a hearing is requested, the commissioner of health shall provide the provider an opportunity to be heard and to present evidence bearing on the amount due for an assessment within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later. An administrative hearing is not a prerequisite to seeking judicial relief.

(f) The commissioner of health may direct that a hearing be held without any request by a personal care services provider.

6. (a) Every personal care services provider shall submit reports on a cash basis of actual gross receipts received from all patient care services and operating income for each month as follows:

(i) for the period January first, nineteen hundred ninety-one through January thirty-first, nineteen hundred ninety-one, the report shall be filed on or before March fifteenth, nineteen hundred ninety-one; and

(ii) for the quarter year ending March thirty-first, nineteen hundred ninety-one and for each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of such quarter.

(b) Every personal care services provider shall submit a certified

annual report on a cash basis of gross receipts received in such calendar year from all patient care services and operating income.

(c) The reports shall be in such form as may be prescribed by the commissioner of health to accurately disclose information required to implement this section.

(d) Final payments shall be due for all personal care services providers for the assessments pursuant to subdivision two of this section upon the due date for submission of the applicable quarterly report.

(e) The commissioner of health may recoup deficiencies in final payments pursuant to paragraph (c) of subdivision five of this section.

7. (a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner of health on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus four percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's estimated payment, may be collected by the commissioner of health pursuant to paragraph (c) of subdivision five of this section in the same manner as an assessment pursuant to subdivision two of this section.

(b) If an estimated payment made for a month to which an assessment applies is less than seventy percent of the actual amount due for such month, a penalty shall be due and payable to the commissioner of health of five percent of the difference between the amount paid and the amount due for such month when the failure to pay is for a duration of not more than one month after the due date of the payment with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. A penalty may be collected by the commissioner of health pursuant to paragraph (c) of subdivision five of this section in the same manner as

an assessment pursuant to subdivision two of this section.

(c) Overpayment by a personal care services provider of an estimated payment shall be applied to any other payment due from the personal care services provider pursuant to this section, or, if no payment is due, at the election of the personal care services provider shall be applied to future estimated payments or refunded to the personal care services provider. Interest shall be paid on overpayments from the date of overpayment to the date of crediting or refund at the rate determined in accordance with paragraph (a) of this subdivision if the overpayment was made at the direction of the commissioner of health. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

8. Funds accumulated, including income from invested funds, from the assessments specified in this section, including interest and penalties, shall be deposited by the commissioner of health and credited to the general fund.

9. Notwithstanding any inconsistent provision of law or regulation to the contrary, the assessments pursuant to this section shall not be an allowable cost in the determination of reimbursement rates pursuant to this article.

10. The assessment shall not be collected in excess of twelve million dollars from such providers for the period of January first, nineteen hundred ninety-one through March thirty-first, nineteen hundred ninety-two. The amount of the assessment collected pursuant to subdivision two of this section in excess of twelve million dollars shall be refunded to providers by the commissioner of health based on the ratio which a provider's assessment for such period bears to the total of the assessments for such period paid by such providers.

11. Each exclusion of sources of gross receipts received from the assessments effective on or after April first, nineteen hundred ninety-two established pursuant to this section shall be contingent upon either: (a) qualification of the assessments for waiver pursuant to federal law and regulation; or (b) consistent with federal law and

regulation, not requiring a waiver by the secretary of the department of health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of the revenues received by the state pursuant to the assessments not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner of health shall collect the assessments relying on such exclusions, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, then the exclusion shall be deemed to have been null and void as of April first, nineteen hundred ninety-two, and the commissioner of health shall collect any retroactive amount due as a result, without interest or penalty provided the personal care services provider pays the retroactive amount due within ninety days of notice from the commissioner of health to the provider that an exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner of health to the provider.

§ 367-o. Health insurance demonstration programs. 1. Notwithstanding any inconsistent provision of law, the commissioner of health is authorized to establish one or more demonstration programs for the purposes of providing additional knowledge and experience in mechanisms to provide, maintain or subsidize health insurance coverage for unemployed and underemployed health care workers.

2. Health insurance continuation demonstration. (a) The commissioner of health is hereby authorized to establish mechanisms to improve the process of authorizing medical assistance payment of health insurance premiums, pursuant to paragraph (c) of subdivision one of section three hundred sixty-seven-a of this title, on behalf of personal care and home health care workers who reside in any city with a population of one million or more and any county with a population of nine hundred thousand or more if such city or county is located within the

metropolitan commuter transportation district created pursuant to section twelve hundred sixty-two of the public authorities law, and whose employment is irregular, episodic, or cyclical, and whose health insurance coverage therefore is frequently disrupted. Notwithstanding the provisions of section three hundred sixty-five of this title, the commissioner of health shall exercise discretion to determine whether medical assistance payment of such premiums is cost effective. If the commissioner of health determines that the test of cost effectiveness of insurance premiums is based on other than a case-by-case basis, no medical assistance payment for such premiums will be made until the commissioner of health obtains all necessary approvals under federal law and regulation to receive federal financial participation in the costs of such medical assistance.

(b) The commissioner of health is authorized in consultation with the superintendent of financial services to require group health insurance plans and employer-based group health plans to report to the department or its designee, insofar as such reporting does not violate any provisions of the federal Employee Retirement Income Security Act of 1974 (ERISA), at such times and in such manner as the commissioner of health shall decide, any information needed to operate such a demonstration project, including, but not limited to, the number of persons in such plans who become ineligible each month for the continuation coverage described in paragraph (a) of this subdivision. In addition, every health maintenance organization certified under article forty-four of the public health law and every insurer licensed by the superintendent of financial services shall submit reports to the superintendent and to the commissioner of health in such form and at such times as may be required to implement the provisions of this subdivision.

3. Rate incentive demonstration. With respect to a demonstration program authorized by subdivision one of this section, the commissioner of health may solicit and accept applications for participation in the demonstration program from any employer, or group of employers, of personal care workers or home health workers, who are employed in any city with a population of one million or more and any county with a population of nine hundred thousand or more if such city or county is

located within the metropolitan commuter transportation district created pursuant to section twelve hundred sixty-two of the public authorities law, and whose employers provide services primarily to medical assistance recipients, if the following conditions are met:

(a) at least fifty percent of the persons receiving services from such employers are recipients of medical assistance;

(b) the employer contributes to a group health insurance plan or employer based group health plan on behalf of such employees; and

(c) no benefits are provided under the group health insurance plan or employer based group health plan in excess of the benefits provided to the majority of hospital workers in the community in which the personal care and home health care workers are employed. The commissioner of health is authorized to add up to fifty-eight million dollars per year for the period January first, two thousand through December thirty-first, two thousand two, and up to one hundred sixty-three million dollars per year for the period January first, two thousand three through June thirtieth, two thousand seven, to rates of payment for qualifying personal care providers and certified home health agencies who are approved to participate in the demonstration program. The commissioner may modify the amounts made available for any specific annual period so long as the total amount made available for the period of the demonstration is not exceeded.

3-a. (a) Notwithstanding subdivision three of this section or any other contrary provision of law and subject to the availability of federal financial participation, the commissioner of health shall, for periods on and after July first, two thousand seven through March thirty-first, two thousand eight, and within amounts appropriated, adjust rates of payments for certified home health agencies and providers of personal care services who, (i) are located in a city with a population of over one million persons, or in a county with a population of over nine hundred thousand persons if such county is located within the metropolitan commuter transportation district created pursuant to section twelve hundred sixty-two of the public authorities law; and (ii) provide more than fifty percent of their total annual hours of home care services to recipients of medical assistance; and (iii) contribute, as of July first, two thousand seven, to a group

health insurance plan or employer based group health plan on behalf of their employees.

(b) Payments made pursuant to this subdivision to eligible providers shall be made proportionally in the form of an add-on to rates of payment, based on each eligible provider's most currently available total annual hours of home care services, as reported to the department, provided to recipients of medical assistance.

(c) Providers which have their rates of payment adjusted pursuant to this subdivision shall use such funds solely for the purpose of supporting health insurance coverage for their employees and are prohibited from using such funds for any other purpose. The commissioner of health is authorized to audit such providers for the purpose of ensuring compliance with the provisions of this paragraph and shall recoup any funds determined to have been used for purposes other than as authorized by this subdivision.

4. Notwithstanding any other law, rule or regulation to the contrary, any subscriber contract issued by an organization certified pursuant to article forty-four of the public health law may, for purposes of implementation of the demonstration authorized by subdivision three of this section, be issued on an experience rated basis.

5. Between January first, two thousand and December thirty-first, two thousand two, the state share amount for all demonstrations pursuant to this section shall be no more than twenty-seven million dollars per twelve month period if averaged over the term of the demonstration; and between January first, two thousand three and June thirtieth, two thousand seven, the state share amount for all demonstrations pursuant to this section shall be no more than sixty-nine million dollars per twelve month period if averaged over the term of the demonstration and between July first, two thousand seven and March thirty-first, two thousand eight, the state share of medical assistance payments authorized in accordance with subdivision two of this section shall not exceed two million eight hundred fifty thousand dollars.

*** § 367-p. Responsibilities of local districts for personal care**

services, home care services and private duty nursing. Consistent with the provisions of section three hundred sixty-seven-n of this title, local social services district responsibilities for personal care services, home care services and private duty nursing shall include the following:

(a) local districts with programs which place individuals discharged from hospitals solely into certified home health agencies shall ensure that those individuals are reviewed for possible placement into personal care services within two weeks of discharge and, if appropriate, placed into personal care services within four weeks thereof;

(b) each local district shall, by September first, nineteen hundred ninety-five, review that plan of care for every recipient receiving personal care on a continuous basis pursuant to sections three hundred sixty-seven-k and three hundred sixty-seven-l of this title;

(c) each local district shall ensure access to a consumer directed personal assistance program operated pursuant to section three hundred sixty-five-f of this title is available in the district to allow persons receiving home care pursuant to this title to directly arrange and pay for such care; and

(d) local districts shall not restrict, and shall not be restricted from approving, the provision of private duty nursing as an alternative to nursing services provided by a home health agency where appropriate and cost-effective pursuant to section three hundred sixty-seven-l.

* NB There are 2 § 367-p's

*** § 367-p. Payment for limited home care services agencies. 1.**

Notwithstanding any law to the contrary, the commissioner shall, subject to the approval of the director of the budget, establish rates of payment for services provided by limited home care services agencies, licensed by the department of health pursuant to section thirty-six hundred five of the public health law, to eligible individuals who are residents of adult homes and enriched housing programs certified by the department in accordance with article seven of this chapter. Services for which reimbursement shall be available are personal care services provided directly by the agency and authorized and provided in accordance with the rules and regulations of the department; and the

administration of medications and application of sterile dressings by a registered nurse provided, however, that the services provided by such agency are not services that must be provided to residents of such facilities pursuant to article seven of this chapter.

2. Notwithstanding any law to the contrary, a limited home care services agency licensed by the department of health shall be reimbursed at a rate that is significantly less than the current costs of providing such services through a personal care provider or certified home health agency in the same service area.

3. For purposes of this section, an eligible individual means an individual who is eligible for medical assistance, as determined by the appropriate social services district, which has also determined that such individual has a medical need for services and that such individual's needs can safely and appropriately be met by the limited home care services agency in the adult home or enriched housing program.

4. Prior to authorizing payment for services provided to an eligible individual by a limited home care services agency, the appropriate social services district must determine that the service proposed to be provided by such agency is cost-effective in comparison to other available and appropriate service delivery options available in the district.

5. The commissioner of health shall establish rates of payment for services provided pursuant to this section by November fifteenth, nineteen hundred ninety-seven.

* NB Expires June 30, 2027

* NB There are 2 § 367-p's

§ 367-q. Personal care services worker recruitment and retention program. 1. The commissioner of health shall, subject to the availability of federal financial participation adjust personal care services medical assistance rates of payment established pursuant to this title for personal care services providers located in local social

service districts which do not include a city with a population of over one million persons in accordance with subdivisions two and three of this section for purposes of improving recruitment and retention of personal care services workers or any worker with direct patient care responsibility in the following aggregate amounts for the following periods:

(a) for the period April first, two thousand two through December thirty-first, two thousand two, seven million dollars;

(b) for the period January first, two thousand three through December thirty-first, two thousand three, fourteen million dollars;

(c) for the period January first, two thousand four through December thirty-first, two thousand four, twenty-one million dollars;

(d) for the period January first, two thousand five through December thirty-first, two thousand five, twenty-seven million dollars;

(e) for the period January first, two thousand six through December thirty-first, two thousand six, thirty-one million dollars, provided however that for the period August first, two thousand six through December thirty-first, two thousand six, such rate adjustments shall be increased by an additional aggregate amount of four million dollars;

(f) for the period January first, two thousand seven through June thirtieth, two thousand seven, thirteen million five hundred thousand dollars;

(g) for the period July first, two thousand seven through March thirty-first, two thousand eight, twenty-six million two hundred fifty thousand dollars;

(h) for the period April first, two thousand eight through March thirty-first, two thousand nine, twenty-eight million five hundred thousand dollars;

(i) for the period April first, two thousand nine through March thirty-first, two thousand ten, twenty-eight million five hundred thousand dollars;

(j) for the period April first, two thousand ten through March thirty-first, two thousand eleven, twenty-eight million five hundred thousand dollars;

(k) for the period April first, two thousand eleven through March thirty-first, two thousand twelve, twenty-eight million five hundred thousand dollars;

(l) for the period April first, two thousand twelve through March thirty-first, two thousand thirteen, up to twenty-eight million five hundred thousand dollars;

(m) for the period April first, two thousand thirteen through March thirty-first, two thousand fourteen, up to twenty-eight million five hundred thousand dollars;

(n) for the period April first, two thousand fourteen through March thirty-first, two thousand fifteen, up to twenty-eight million five hundred thousand dollars;

(o) for the period April first, two thousand fifteen through March thirty-first, two thousand sixteen, up to twenty-eight million five hundred thousand dollars; and

(p) for the period April first, two thousand sixteen through March thirty-first, two thousand seventeen, up to twenty-eight million five hundred thousand dollars;

(q) for the period April first, two thousand seventeen through March thirty-first, two thousand eighteen, up to twenty-eight million five hundred thousand dollars;

(r) for the period April first, two thousand eighteen through March thirty-first, two thousand nineteen, twenty-eight million five hundred thousand dollars;

(s) for the period April first, two thousand nineteen through March thirty-first, two thousand twenty, twenty-eight million five hundred thousand dollars;

(t) for the period April first, two thousand twenty through March thirty-first, two thousand twenty-one, up to twenty-eight million five hundred thousand dollars;

(u) for the period April first, two thousand twenty-one through March thirty-first, two thousand twenty-two, up to twenty-eight million five hundred thousand dollars;

(v) for the period April first, two thousand twenty-two through March thirty-first, two thousand twenty-three, up to twenty-eight million five hundred thousand dollars;

(w) for the period April first, two thousand twenty-three through March thirty-first, two thousand twenty-four, up to twenty-eight million five hundred thousand dollars;

(x) for the period April first, two thousand twenty-four through March

thirty-first, two thousand twenty-five, up to twenty-eight million five hundred thousand dollars;

(y) for the period April first, two thousand twenty-five through March thirty-first, two thousand twenty-six, up to twenty-eight million five hundred thousand dollars;

(z) for the period April first, two thousand twenty-six through March thirty-first, two thousand twenty-seven, up to twenty-eight million five hundred thousand dollars;

(aa) for the period April first, two thousand twenty-seven through March thirty-first, two thousand twenty-eight, up to twenty-eight million five hundred thousand dollars;

(bb) for the period April first, two thousand twenty-eight through March thirty-first, two thousand twenty-nine, up to twenty-eight million five hundred thousand dollars.

2. Such adjustments to rates of payments shall be allocated proportionally based on each personal care services providers' total annual hours of personal care services provided, as reported in each such provider's nineteen hundred ninety-nine cost report as submitted to the department of health prior to November first, two thousand one, provided, however, that for periods on and after July first, two thousand seven, such payments shall be in the form of a percentage add-on to rates of payments of eligible providers based on the proportion of each personal care services providers' total annual hours of personal care services provided to recipients of medical assistance to the total annual hours of personal care services provided by such providers.

3. Payments made pursuant to this section shall not be subject to subsequent adjustment or reconciliation.

4. Personal care services providers which have their rates adjusted pursuant to this section shall use such funds for the purpose of recruitment and retention of non-supervisory personal care services workers or any worker with direct patient care responsibility only and are prohibited from using such funds for any other purpose. Each such personal care services provider shall submit, at a time and in a manner

to be determined by the commissioner of health, a written certification attesting that such funds will be used solely for the purpose of recruitment and retention of non-supervisory personal care services workers or any worker with direct patient care responsibility. The commissioner of health is authorized to audit each such provider to ensure compliance with the written certification required by this subdivision and shall recoup any funds determined to have been used for purposes other than recruitment and retention of non-supervisory personal care services workers or any worker with direct patient care responsibility. Such recoupment shall be in addition to any other penalties provided by law.

§ 367-r. Private duty nursing services worker recruitment and retention program. 1. (a) The commissioner of health, with the approval of the director of the budget, shall establish fees for the reimbursement of private duty nursing services.

(b) The commissioner of health shall, subject to the provisions of paragraph (b) of subdivision two of this section and to the availability of federal financial participation, increase medical assistance rates of payment by three percent for services provided on and after December first, two thousand two, for private duty nursing services for the purposes of improving recruitment and retention of private duty nurses.

2. Medically fragile children and medically fragile adults. (a) In addition, the commissioner shall further increase rates for private duty nursing services that are provided to medically fragile children to ensure the availability of such services to such children. Furthermore, no later than sixty days after the effective date of the chapter of the laws of two thousand twenty-two that amended this subdivision, increased rates shall be extended for private duty nursing services provided to medically fragile adults. In establishing rates of payment under this subdivision, the commissioner shall consider the cost neutrality of such rates as related to the cost effectiveness of caring for medically fragile children and medically fragile adults in a non-institutional setting as compared to an institutional setting. Medically fragile children shall, for the purposes of this subdivision, have the same

meaning as in subdivision three-a of section thirty-six hundred fourteen of the public health law. For purposes of this subdivision, "medically fragile adult" shall be defined as including but not limited to any individual who previously qualified as a medically fragile child but no longer meets the age requirement. Such increased rates for services rendered to such children and adults may take into consideration the elements of cost, geographical differentials in the elements of cost considered, economic factors in the area in which the private duty nursing service is provided, costs associated with the provision of private duty nursing services to medically fragile children and medically fragile adults, and the need for incentives to improve services and institute economies and such increased rates shall be payable only to those private duty nurses who can demonstrate, to the satisfaction of the department of health, satisfactory training and experience to provide services to such children and medically fragile adults. Such increased rates shall be determined based on application of the case mix adjustment factor for AIDS home care program services rates as determined pursuant to applicable regulations of the department of health. The commissioner may promulgate regulations to implement the provisions of this subdivision.

(b) Private duty nursing services providers which have their rates adjusted pursuant to paragraph (b) of subdivision one of this section and paragraph (a) of this subdivision shall use such funds solely for the purposes of recruitment and retention of private duty nurses or to ensure the delivery of private duty nursing services to medically fragile children and medically fragile adults and are prohibited from using such funds for any other purpose. Funds provided under paragraph (b) of subdivision one of this section and paragraph (a) of this subdivision are not intended to supplant support provided by a local government. Each such provider, with the exception of self-employed private duty nurses, shall submit, at a time and in a manner to be determined by the commissioner of health, a written certification attesting that such funds will be used solely for the purpose of recruitment and retention of private duty nurses or to ensure the delivery of private duty nursing services to medically fragile children and medically fragile adults. The commissioner of health is authorized to audit each such provider to ensure compliance with the written

certification required by this subdivision and shall recoup all funds determined to have been used for purposes other than recruitment and retention of private duty nurses or the delivery of private duty nursing services to medically fragile children and medically fragile adults. Such recoupment shall be in addition to any other penalties provided by law.

(c) The commissioner of health shall, subject to the provisions of paragraph (b) of this subdivision, and the provisions of subdivision three of this section, and subject to the availability of federal financial participation, annually increase fees for the fee-for-service reimbursement of private duty nursing services provided to medically fragile children by fee-for-service private duty nursing services providers who enroll and participate in the provider directory pursuant to subdivision three of this section, over a period of three years, commencing October first, two thousand twenty, by one-third annual increments, until such fees for reimbursement equal the final benchmark payment designed to ensure adequate access to the service. In developing such benchmark the commissioner of health may utilize the average two thousand eighteen Medicaid managed care payments for reimbursement of such private duty nursing services. The commissioner may promulgate regulations to implement the provisions of this paragraph.

(d) The commissioner of health shall, subject to the provisions of paragraph (b) of this subdivision, and the provisions of subdivision three of this section, and subject to the availability of federal financial participation, increase fees for the fee-for-service reimbursement of private duty nursing services provided to medically fragile adults by fee-for-service private duty nursing services providers who enroll and participate in the provider directory pursuant to subdivision three of this section, no later than sixty days after the effective date of the chapter of the laws of two thousand twenty-two that amended this subdivision, so such fees for reimbursement equal the benchmark payment designed to ensure adequate access to the service. In developing such benchmark the commissioner of health may utilize the average two thousand twenty Medicaid managed care payments for reimbursement of such private duty nursing services. The commissioner may promulgate regulations to implement the provisions of this paragraph.

3. Provider directory for fee-for-service private duty nursing services provided to medically fragile children and medically fragile adults. The commissioner of health is authorized to establish a directory of qualified providers for the purpose of promoting the availability and ensuring delivery of fee-for-service private duty nursing services to medically fragile children and medically fragile adults. Qualified providers enrolling in the directory shall ensure the availability and delivery of and shall provide such services to those individuals as are in need of such services, and shall receive increased reimbursement for such services pursuant to paragraphs (c) and (d) of subdivision two of this section. The directory shall offer enrollment to all private duty nursing services providers to promote and ensure the participation in the directory of all nursing services providers available to serve medically fragile children and medically fragile adults.

*** § 367-s. Long term care demonstration program.** 1. Notwithstanding any inconsistent provision of law, the commissioner of health is authorized to establish a long term care demonstration program for persons eligible to receive services under this title, to operate in up to four social services districts, for the purposes of creating incentives for providers to care for individuals with more complex medical needs, supporting relatives and other caregivers to assist patients needing care at home and reducing the need for institutionalization.

2. The provisions of this section shall not take effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of the health care services provided pursuant to this section.

3. (a) The demonstration program established pursuant to this section may include a program to improve the availability of care for persons with clinically complex care needs who are being discharged from hospitals or residential health care facilities. In this regard, and in

accordance with paragraph (d) of this subdivision, the commissioner shall adjust the rates of payment to selected home health agencies certified under article thirty-six of the public health law that provide services to such persons.

(b) Eligible certified home health agencies shall:

(i) demonstrate they have the experience and resources to provide services to individuals who are discharged from hospitals or residential health care facilities with clinically complex care needs, as determined in accordance with criteria established by the commissioner.

(ii) demonstrate that they are capable of meeting such other conditions as may be established by the commissioner.

(c) In selecting eligible certified home health agencies, the commissioner shall consider the likelihood that the agency will provide improved availability of care and may consider such other matters as the commissioner deems appropriate.

(d) The adjusted Medicaid rate pursuant to this subdivision shall be available for eligible certified home health agencies for services provided to individuals, eligible for medical assistance pursuant to this title, who are discharged from a hospital or residential health care facility and have clinically complex care needs, as determined in accordance with criteria established by the commissioner. Such rate shall be payable for services provided up to the first sixty days after discharge from a hospital or residential health care facility.

4. One or more demonstration sites established pursuant to this section may include the provision of respite care through innovative models. Subject to the approval of the director of the division of the budget, the commissioner is authorized to establish payment rates or fees for services provided pursuant to this subdivision.

5. One or more of the demonstration sites established pursuant to this section may include a program with authority to make payments for personal care services that are provided by a consumer's family members.

* NB There are 2 § 367-s's

*** § 367-s. Emergency medical transportation services. 1.**

Notwithstanding any provision of law to the contrary, a supplemental medical assistance payment shall be made on an annual basis to providers of emergency medical transportation services in an aggregate amount not to exceed four million dollars for two thousand six, six million dollars for two thousand seven, six million dollars for two thousand eight, six million dollars for the period May first, two thousand fourteen through March thirty-first, two thousand fifteen, and six million dollars annually beginning with the period April first, two thousand fifteen through March thirty-first, two thousand sixteen pursuant to the following methodology:

(a) For each emergency medical transportation services provider that receives medical assistance reimbursement processed through the state Medicaid payment system, the department of health shall determine the ratio of such provider's state-processed reimbursement to the total such reimbursement made during each quarter of the applicable calendar year, expressed as a percentage;

(b) For each such provider, the department of health shall multiply the percentage obtained pursuant to paragraph (a) of this subdivision by one-quarter of the applicable aggregate amount specified in the opening paragraph of this subdivision. The result of such calculation shall represent the "emergency medical transportation service supplemental payment" and shall be paid expeditiously to such provider on a quarterly basis;

2. The amount disbursed to emergency medical transportation services providers whose area of operation is within the city of New York will be twenty-five percent of the applicable aggregate amount, with the remaining seventy-five percent to be disbursed to all other emergency medical transportation services providers.

3. If all necessary approvals under federal law and regulation are not obtained to receive federal financial participation in the payments authorized by this section, payments under this section shall be made in an aggregate amount not to exceed two million dollars for two thousand six, three million dollars for two thousand seven, three million dollars for two thousand eight, three million dollars for the period May first, two thousand fourteen through March thirty-first, two thousand fifteen,

and three million dollars annually beginning with the period April first, two thousand fifteen through March thirty-first, two thousand sixteen. In such case, the multiplier set forth in paragraph (b) of subdivision one of this section shall be deemed to be two million dollars or three million dollars as applicable to the annual period.

4. Notwithstanding any inconsistent provisions of section three hundred sixty-eight-a of this title, or of any other law, to the contrary, the department of health shall pay one hundred per centum of the non-federal share of any payments made pursuant to this section.

* NB There are 2 § 367-s's

§ 367-t. Payment for emergency physician services. Amounts payable under this title for medical assistance for items and services provided to eligible persons by qualified emergency physicians, provided in an emergency room of an entity certified pursuant to article twenty-eight of the public health law to treat an emergency condition, as defined in subdivision three of section forty-nine hundred of the public health law, which are authorized pursuant to section three hundred sixty-five-a of this title shall be no less than twenty-five dollars per visit. For the purpose of this section eligible persons shall not include persons provided items and services by the medicaid managed care program.

§ 367-u. Payment for home telehealth services. 1. Subject to the approval of the state director of the budget, the commissioner may authorize the payment of medical assistance funds for demonstration rates or fees established for home telehealth services provided pursuant to subdivision three-c of section thirty-six hundred fourteen of the public health law.

2. Subject to federal financial participation and the approval of the director of the budget, the commissioner shall not exclude from the payment of medical assistance funds the delivery of health care services through telehealth, as defined in subdivision four of section two thousand nine hundred ninety-nine-cc of the public health law. Such

services shall meet the requirements of federal law, rules and regulations for the provision of medical assistance pursuant to this title.

§ 367-v. County long-term care financing demonstration program. 1.

Notwithstanding any inconsistent provision of law, the commissioner is authorized to establish a long-term care financing demonstration program, to operate in up to five counties, for the purpose of creating incentives and funding for the transformation of county nursing home beds into other long-term care settings.

2. (a) The demonstration program established pursuant to this section shall permit a participating county to reduce its county nursing home bed capacity, or to close a county nursing home, and to invest any resulting demonstrated savings in programs or services that will, to the extent feasible, encourage the use of community-based long-term care alternatives to institutional care.

(b) Such programs or services may include, but are not limited to:

(i) expansion of community-based services such as the program for all-inclusive care for the elderly (PACE), the long term home health care program, the managed long term care program, adult day care services, and caregiver support services;

(ii) expansion of senior housing;

(iii) assisted living program;

(iv) payment of subsidies to encourage assisted living programs, adult care facilities, and non-public nursing homes to accept hard-to-serve residents; and

(v) contracts with non-public nursing homes to guarantee beds for those hard-to-serve persons who choose nursing home care or for whom other community-based options are not feasible or are unavailable.

3. A county wishing to participate in the demonstration program established pursuant to this section shall develop a plan and submit an application for participation to the commissioner of health detailing such plan at a time and in a manner to be determined by such commissioner. The commissioner is authorized to approve or disapprove

any such application and to certify the amount of demonstrated savings.

4. Notwithstanding the cap on social services district shares of medical assistance expenditures established pursuant to section one of part C of chapter fifty-eight of the laws of two thousand five, the director of the division of the budget is authorized, in his or her sole discretion, to adjust a district's cap amount to account for changes in the non-federal share of medical assistance resulting from any approved demonstration plan.

5. The commissioner of health is authorized to submit any amendments to the state plan for medical assistance and any waivers of the federal social security act that such commissioner determines to be necessary to obtain federal financial participation in the costs of services provided pursuant to this section.

6. The commissioner of health shall submit a report to the governor, temporary president of the senate and speaker of the assembly by the first day of November, two thousand fifteen, on the implementation of this section. Such report shall include identification of the counties approved to participate in the demonstration, a description of such counties' approved demonstration plans, an analysis of the impact of the demonstration on long-term care costs and service delivery, any recommendations for legislative action, and such other matters as may be pertinent.

§ 367-w. Health care and mental hygiene worker bonuses. 1. Purpose and intent. New York's essential front line health care and mental hygiene workers have seen us through a once-in-a-century public health crisis and turned our state into a model for battling and beating COVID-19. To attract talented people into the profession at a time of such significant strain while also retaining those who have been working so tirelessly these past two years, we must recognize the efforts of our health care and mental hygiene workforce and reward them financially for their service.

To do that, the commissioner of health is hereby directed to seek federal approvals as applicable, and, subject to federal financial participation, to support with federal and state funding bonuses to be made available during the state fiscal year of 2023 to recruit, retain, and reward health care and mental hygiene workers.

2. Definitions. As used in this section, the term:

(a) "Employee" means certain front line health care and mental hygiene practitioners, technicians, assistants and aides that provide hands on health or care services to individuals, without regard to whether the person works full-time, part-time, on a salaried, hourly, or temporary basis, or as an independent contractor, that received an annualized base salary of one hundred twenty-five thousand dollars or less, to include:

(i) Physician assistants, dental hygienists, dental assistants, psychiatric aides, pharmacists, pharmacy technicians, physical therapists, physical therapy assistants, physical therapy aides, occupational therapists, occupational therapy assistants, occupational therapy aides, speech-language pathologists, respiratory therapists, exercise physiologists, recreational therapists, all other therapists, orthotists, prosthetists, clinical laboratory technologists and technicians, diagnostic medical sonographers, nuclear medicine technologists, radiologic technologists, magnetic resonance imaging technologists, ophthalmic medical technicians, radiation therapists, dietetic technicians, cardiovascular technologists and technicians, certified first responders, emergency medical technicians, advanced emergency medical technicians, paramedics, surgical technologists, all other health technologists and technicians, orderlies, medical assistants, phlebotomists, all other health care support workers, nurse anesthetists, nurse midwives, nurse practitioners, registered nurses, nursing assistants, and licensed practical and licensed vocational nurses;

(ii) to the extent not already included in subparagraph (i) of this paragraph, staff who perform functions as described in the consolidated fiscal report (CFR) manual with respect to the following title codes:

Mental Hygiene Worker;

Residence/Site Worker;

Counselor (OMH);

Manager (OMH);

Senior Counselor (OMH);

Supervisor (OMH);

Developmental Disabilities Specialist QIDP - Direct Care (OPWDD);

Certified Recovery Peer Advocate;

Peer Professional - Non-CRPA (OASAS Only);

Job Coach/Employment Specialist (OMH and OPWDD);

Peer Specialist (OMH);

Counselor - Alcoholism and Substance Abuse (CASAC);

Counseling Aide/Assistant - Alcoholism and Substance Abuse;

Other Direct Care Staff;

Case Manager;

Counselor - Rehabilitation;

Developmental Disabilities Specialist/Habilitation Specialist QIDP -
Clinical (OPWDD);

Emergency Medical Technician;

Intensive Case Manager (OMH);

Intensive Case Manager/Coordinator (OMH);

Nurse - Licensed Practical;

Nurse - Registered;

Psychologist (Licensed);

Psychologist (Master's Level)/Behavioral Specialist;

Psychology Worker/Other Behavioral Worker;

Social Worker - Licensed (LMSW, LCSW);

Social Worker - Master's Level (MSW);

Licensed Mental Health Counselor (OASAS, OMH, OCFS);

Licensed Psychoanalyst (OMH);

Therapist - Recreation;

Therapist - Activity/Creative Arts;

Therapist - Occupational;

Dietician/Nutritionist;

Therapy Assistant/Activity Assistant;

Nurse's Aide/Medical Aide;

Behavior Intervention Specialist 1 (OPWDD);

Behavior Intervention Specialist 2 (OPWDD);

Clinical Coordinator;

Intake/Screening;

Pharmacist;

Marriage and Family Counselor/Therapist;

Residential Treatment Facility (RTF) Transition Coordinator (OMH);

Crisis Prevention Specialist (OMH);

Early Recognition Specialist (OMH);

Other Clinical Staff/Assistants;

Nurse Practitioner/Nursing Supervisor;

Therapist - Physical;

Therapist - Speech;

Program or Site Director; and

Assistant Program or Assistant Site Director; and

(iii) such titles as determined by the commissioner, or relevant agency commissioner as applicable, and approved by the director of the budget.

(b) "Employer" means a provider enrolled in the medical assistance program under this title that employs at least one employee and that bills for services under the state plan or a home and community based services waiver authorized pursuant to subdivision (c) of section nineteen hundred fifteen of the federal social security act, or that has a provider agreement to bill for services provided or arranged through a managed care provider under section three hundred sixty-four-j of this title or a managed long term care plan under section forty-four hundred three-f of the public health law, to include:

(i) providers and facilities licensed, certified or otherwise

authorized under articles twenty-eight, thirty, thirty-six or forty of the public health law, articles sixteen, thirty-one, thirty-two or thirty-six of the mental hygiene law, article seven of this chapter, fiscal intermediaries under section three hundred sixty-five-f of this title, pharmacies registered under section six thousand eight hundred eight of the education law, or school based health centers;

(ii) programs that participate in the medical assistance program and are funded by the office of mental health, the office of addiction services and supports, or the office for people with developmental disabilities; and

(iii) other provider types determined by the commissioner and approved by the director of the budget;

(iv) provided, however, that unless the provider is subject to a certificate of need process as a condition of state licensure or approval, such provider shall not be an employer under this section unless at least twenty percent of the provider's patients or persons served are eligible for services under this title and title XIX of the federal social security act.

(c) Notwithstanding the definition of employer in paragraph (b) of this subdivision, and without regard to the availability of federal financial participation, "employer" shall also include an institution of higher education, a public or nonpublic school, a charter school, an approved preschool program for students with disabilities, a school district or boards of cooperative educational services, programs funded by the office of mental health, programs funded by the office of addiction services and supports, programs funded by the office for people with developmental disabilities, programs funded by the office for the aging, a health district as defined in section two of the public health law, or a municipal corporation, where such program or entity employs at least one employee. Such employers shall be required to enroll in the system designated by the commissioner, or relevant agency commissioners, in consultation with the director of the budget, for the purpose of claiming bonus payments under this section. Such system or process for claiming bonus payments may be different from the system and process used under subdivision three of this section.

(d) "Vesting period" shall mean a series of six-month periods between the dates of October first, two thousand twenty-one and March

thirty-first, two thousand twenty-four for which employees that are continuously employed by an employer during such six-month periods, in accordance with a schedule issued by the commissioner or relevant agency commissioner as applicable, may become eligible for a bonus pursuant to subdivision four of this section.

(e) "Base salary" shall mean, for the purposes of this section, the employee's gross wages with the employer during the vesting period, excluding any bonuses or overtime pay.

(f) "Municipal corporation" means a county outside the city of New York, a city, including the city of New York, a town, a village, or a school district.

3. Tracking and submission of claims for bonuses. (a) The commissioner, in consultation with the commissioner of labor and the Medicaid inspector general, and subject to any necessary approvals by the federal centers for Medicare and Medicaid services, shall develop such forms and procedures as may be needed to identify the number of hours employees worked and to provide reimbursement to employers for the purposes of funding employee bonuses in accordance with hours worked during the vesting period.

(b) Using the forms and processes developed by the commissioner under this subdivision, employers shall, for a period of time specified by the commissioner:

(i) track the number of hours that employees work during the vesting period and, as applicable, the number of patients served by the employer who are eligible for services under this title; and

(ii) submit claims for reimbursement of employee bonus payments. In filling out the information required to submit such claims, employers shall use information obtained from tracking required pursuant to paragraph (a) of this subdivision and provide such other information as may be prescribed by the commissioner. In determining an employee's annualized base salary, the employer shall use information based on payroll records.

(c) Employers shall be responsible for determining whether an employee is eligible under this section and shall maintain and make available upon request all records, data and information the employer relied upon in making the determination that an employee was eligible, in accordance

with paragraph (d) of this subdivision.

(d) Employers shall maintain contemporaneous records for all tracking and claims related information and documents required to substantiate claims submitted under this section for a period of no less than six years. Employers shall furnish such records and information, upon request, to the commissioner, the Medicaid inspector general, the commissioner of labor, the secretary of the United States Department of Health and Human Services, and the deputy attorney general for Medicaid fraud control.

4. Payment of worker bonuses. (a) Upon issuance of a vesting schedule by the commissioner, or relevant agency commissioner as applicable, employers shall be required to pay bonuses to employees pursuant to such schedule based on the number of hours worked during the vesting period. The schedule shall provide for total payments not to exceed three thousand dollars per employee in accordance with the following:

(i) employees who have worked an average of at least twenty but less than thirty hours per week over the course of a vesting period would receive a five hundred dollar bonus for the vesting period;

(ii) employees who have worked an average of at least thirty but less than thirty-five hours per week over the course of a vesting period would receive a one thousand dollar bonus for such vesting period;

(iii) employees who have worked an average of at least thirty-five hours per week over the course of a vesting period would receive a one thousand five hundred dollar bonus for such vesting period.

(iv) full-time employees who are exempt from overtime compensation as established in the labor commissioner's minimum wage orders or otherwise provided by New York state law or regulation over the course of a vesting period would receive a one thousand five hundred dollar bonus for such vesting period.

(b) Notwithstanding paragraph (a) of this subdivision, the commissioner may through regulation specify an alternative number of vesting periods, provided that total payments do not exceed three thousand dollars per employee.

(c) Employees shall be eligible for bonuses for no more than two vesting periods per employer, in an amount equal to but not greater than three thousand dollars per employee across all employers.

(d) Upon completion of a vesting period with an employer, an employee shall be entitled to receive the bonus and the employer shall be required to pay the bonus no later than the date specified under this subdivision, provided however that prior to such date the employee does not terminate, through action or inaction, the employment relationship with the employer, in accordance with any employment agreement, including a collectively bargained agreement, if any, between the employee and employer.

(e) Any bonus due and payable to an employee under this section shall be made by the employer no later than thirty days after the bonus is paid to the employer.

(f) an employer shall be required to submit a claim for a bonus to the department no later than thirty days after an employee's eligibility for a bonus vests, in accordance with and upon issuance of the schedule issued by the commissioner or relevant agency commissioner.

(g) No portion of any dollars received from claims under subparagraph (ii) of paragraph (b) of subdivision three of this section for employee bonuses shall be returned to any person other than the employee to whom the bonus is due or used to reduce the total compensation an employer is obligated to pay to an employee under section thirty-six hundred fourteen-c of the public health law, section six hundred fifty-two of the labor law, or any other provisions of law or regulations, or pursuant to any collectively bargained agreement.

(h) No portion of any bonus available pursuant to this subdivision shall be payable to a person who has been suspended or excluded under the medical assistance program during the vesting period and at the time an employer submits a claim under this section.

(i) The use of any accruals or other leave, including but not limited to sick, vacation, or time used under the family medical leave act, shall be credited towards and included in the calculation of the average number of hours worked per week over the course of the vesting period.

5. Audits, investigations and reviews. (a) The Medicaid inspector general shall, in coordination with the commissioner, conduct audits, investigations and reviews of employers required to submit claims under this section. Such claims, inappropriately paid, under this section shall constitute overpayments as that term is defined under the

regulations governing the medical assistance program. The Medicaid inspector general may recover such overpayments to employers as it would an overpayment under the medical assistance program, impose sanctions up to and including exclusion from the medical assistance program, impose penalties, and take any other action authorized by law where:

(i) an employer claims a bonus not due to an employee or a bonus amount in excess of the correct bonus amount due to an employee;

(ii) an employer claims, receives and fails to pay any part of the bonus due to a designated employee;

(iii) an employer fails to claim a bonus due to an employee.

(b) Any employer identified in paragraph (a) of this subdivision who fails to identify, claim and pay any bonus for more than ten percent of its employees eligible for the bonus shall also be subject to additional penalties under subdivision four of section one hundred forty-five-b of this article.

(c) Any employer who fails to pay any part of the bonus payment to a designated employee shall remain liable to pay such bonus to that employee, regardless of any recovery, sanction or penalty the Medicaid inspector general may impose.

(d) In all instances recovery of inappropriate bonus payments shall be recovered from the employer. The employer shall not have the right to recover any inappropriately paid bonus from the employee.

(e) Where the Medicaid inspector general sanctions an employer for violations under this section, they may also sanction any affiliates as defined under the regulations governing the medical assistance program.

6. Rules and regulations. The commissioner, in consultation with the Medicaid inspector general as it relates to subdivision five of this section, may promulgate rules, to implement this section pursuant to emergency regulation; provided, however, that this provision shall not be construed as requiring the commissioner to issue regulations to implement this section.

§ 367-x. Payment for violence prevention programs. 1. As used in this section, the following terms shall have the following definitions:

(a) "Community violence" means intentional acts of interpersonal

violence committed by individuals who are not intimately related to the victim.

(b) "Community violence prevention services" means evidence-informed, trauma-informed, culturally responsive, supportive and non-psychotherapeutic services provided by a qualified violence prevention professional for the purpose of promoting improved health outcomes, trauma recovery, and positive behavioral change, preventing injury recidivism and reducing the likelihood that individuals who are victims of community violence will commit or promote violence themselves. "Community violence prevention services" may include the provision of peer support and counseling, mentorship, conflict mediation, crisis intervention, targeted case management, referrals to certified or licensed health care professionals or social services providers, case management, community and school support services, patient education or screening services to victims of community violence.

(c) "Prevention professional" means an individual who works in programs aimed to address specific patient needs, such as suicide prevention, violence prevention, alcohol avoidance, drug avoidance, and tobacco prevention. The goal of such individual's work is to reduce the risk of relapse, injury, or re-injury of the patient.

(d) "Qualified violence prevention professional" means a prevention professional who meets all of the conditions specified in subdivision five of this section.

2. Within thirty days of the effective date of this section, the commissioner shall apply to the federal government for approval of an amendment to the Medicaid state plan to make community violence prevention services available, to the extent permitted by federal law, to any Medicaid beneficiary who has:

(a) been exposed to community violence, or has a personal history of injury sustained as a result of an act of community violence; and

(b) been referred by a certified or licensed health care provider or social services provider to receive community violence prevention services from a qualified violence prevention professional, after such provider determines such beneficiary to be at elevated risk of a violent injury or retaliation resulting from another act of community violence.

3. The commissioner shall seek any federal approvals necessary to implement this section, including, but not limited to, any state plan amendments or federal waivers by the federal Centers for Medicare and Medicaid Services.

4. Once federal approval has been applied for, the commissioner, shall, in consultation with violence intervention organizations and local community-based and hospital-based violence prevention programs:

(a) issue guidance on the use of community violence prevention services for beneficiaries who access these services under the medical assistance program; and

(b) determine maximum allowable rates for community violence prevention services based upon the medical assistance program fee-for-service outpatient rates for the same or similar services, or any other data deemed reliable and relevant by the commissioner.

5. Any prevention professional seeking certification as a qualified violence prevention professional shall:

(a) complete at least six months of full-time equivalent experience in providing community violence prevention services or youth development services through employment, volunteer work or as part of an internship experience;

(b) complete a training and certification program approved by the department of health for qualified violence prevention professionals, approved in accordance with subdivision six of this section, by a provider approved by the commissioner;

(c) complete annually at least four hours of continuing education, by a provider approved by the commissioner, in the field of community violence prevention services;

(d) complete prevention professionals training for the population of patients with whom they work; and

(e) satisfy any other requirements established by the commissioner, for certification as a qualified violence prevention professional.

6. Within ninety days of the effective date of this section, the department of health shall approve at least one governmental or

nongovernmental accrediting body with expertise in community violence prevention services to review and approve training and certification programs for qualified violence prevention professionals. The accrediting body shall approve programs that such body determines, in its discretion, will adequately prepare individuals to provide community violence prevention services to individuals who are victims of community violence. Such programs shall include at least thirty-five hours of training, collectively addressing all of the following:

- (a) the profound effects of trauma and violence and the basics of trauma-informed care; and

- (b) community violence prevention strategies, including, but not limited to, conflict mediation and retaliation prevention related to community violence; case management and advocacy practices; and patient privacy and the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended from time to time, (HIPAA).

7. Any entity that employs or contracts with a qualified violence prevention professional to provide community violence prevention services shall:

- (a) maintain documentation that the qualified violence prevention professional has met all of the conditions described in subdivision six of this section; and

- (b) ensure that the qualified violence prevention professional is providing community violence prevention services in compliance with any applicable standards of care, rules, regulations and governing law of the state or federal government.

8. Nothing in this section shall alter the scope of practice for any health care professional or authorize the delivery of health care services in a setting or in a manner that is not currently authorized.

9. This section shall be implemented only to the extent that federal financial participation is available, and any necessary federal approvals have been obtained.

§ 367-y. Reimbursement for treatment in place and transportation to

alternative health care settings. 1. Notwithstanding any provision of law to the contrary, any provision of this title providing for reimbursement of transportation costs for an ambulance service shall also apply where, instead of providing transportation to a general hospital, such ambulance service when responding to an emergency call:

(a) Administers treatment in place, including but not limited to telehealth visits approved by Medicaid for reimbursement when deemed necessary; and/or

(b) Transports an individual to an alternative health care setting.

2. For the purposes of this section, the following terms shall have the following meanings:

(a) "Alternative health care setting" means the following facilities or institutions approved by Medicaid for reimbursement and accepting Medicaid recipients:

(i) a crisis stabilization center or certified community behavioral health clinic operating pursuant to article thirty-six of the mental hygiene law;

(ii) a facility under section 7.17 of the mental hygiene law;

(iii) a facility providing addiction disorder services or behavioral health services, as such terms are defined by section 1.03 of the mental hygiene law;

(iv) a diagnostic and treatment center established pursuant to article twenty-eight of the public health law, or an upgraded diagnostic and treatment center designated as such pursuant to section twenty-nine hundred fifty-six of the public health law;

(v) a federally qualified health center; or

(vi) an urgent care center, which for the purposes of this section shall mean a facility that provides episodic care related to an acute illness or minor traumas that are not life-threatening or permanently disabling.

(b) "Ambulance service" shall have the same meaning as defined by section three thousand one of the public health law.

(c) "General hospital" shall have the same meaning as defined by section twenty-eight hundred one of the public health law.

(d) "Treatment in place" means the administration of emergency medical services, as defined by section three thousand one of the public health

law, by an employee or volunteer of an ambulance service. Such services shall be consistent with protocols promulgated pursuant to article thirty of the public health law.

3. This section shall be effective if, and as long as, federal financial participation is available therefor.

4. Nothing in this section shall be deemed to allow a person to provide any service for which a license, registration, certification or other authorization under title eight of the education law is required and which the person does not possess.

§ 368. Quarterly estimates. Each public welfare district shall submit to the department quarterly estimates of its anticipated expenditures for medical assistance for needy persons and administrative expenses not less than thirty days before the first day of each of the quarters beginning on the first day of the months of July, October, January and April, in such form and together with such other information as the department may require.

§ 368-a. State reimbursement. 1. The department shall review the expenditures made by social services districts for medical assistance for needy persons, and the administration thereof, before making reimbursement. Before approving such expenditures for reimbursement, the department shall give due consideration to the results of the reviews and audits conducted by the department of health pursuant to subdivision two of section three hundred sixty-four. If approved by the department, such expenditures shall not be subject to reimbursement by the state pursuant to section one hundred fifty-three or any provision of this chapter other than this section, but shall be subject to reimbursement by the state in accordance with this section and the regulations of the department, as follows:

There shall be paid to each such district

(a) the amount of federal funds, if any, properly received or to be

received on account of such expenditures;

(b) the full amount expended on behalf of the department for medical assistance furnished under this title to eligible patients in state institutions for the mentally disabled, in facilities or parts thereof for the care and treatment of drug dependent persons operated pursuant to the mental hygiene law and in other hospitals while such patients are on release from an institution in the state department of mental hygiene or from a drug abuse treatment facility or part thereof operated in compliance with applicable provisions of law and supervised by the state division of substance abuse services, to eligible veterans and their dependents in that part of the New York state home for veterans and their dependents at Oxford that has been approved pursuant to law as a nursing home and in a hospital while on release from that home for the purpose of receiving care in such hospital, in that part of a public institution operated for the care of the mentally disabled that has been approved pursuant to law as an intermediate care facility, to eligible veterans and their dependents in that part of the New York state home for veterans and their dependents at Oxford that has been approved pursuant to law as an intermediate care facility and in a hospital while on release from such intermediate care facilities for the purpose of receiving care in such hospital, and for the administration thereof, after first deducting therefrom any federal funds properly received or to be received on account thereof;

(c) the full amount expended for medical assistance furnished under this title to eligible Indians and members of their families residing on any Indian reservation in this state, and for the administration thereof, after first deducting therefrom any federal funds properly received or to be received on account thereof;

(d) fifty per centum of the amount expended for medical assistance furnished under this title to other eligible persons, and for the administration thereof, after first deducting therefrom any federal funds properly received or to be received on account thereof.

(e) one hundred percentum of the amount expended for the development of medical assistance data systems, after first deducting therefrom any federal funds properly received or to be received on account thereof. Such reimbursement shall be available only to the extent that such projects have received federal approval and to the extent that claims

for ninety percent federal aid have been approved.

(f) The full amount expended on behalf of the department for medical assistance furnished to persons described in subdivision five of section three hundred sixty-five of this article, including the administration thereof, after first deducting therefrom any federal funds properly received or to be received on account of such expenditures.

(g) Notwithstanding any other provision of law, reimbursement for the following services: care, treatment, maintenance and nursing services in nursing homes and health related care and services in intermediate care facilities provided in accordance with paragraph (b) of subdivision two of section three hundred sixty-five-a of this title; home health services provided in accordance with paragraph (d) of subdivision two of section three hundred sixty-five-a of this title; personal care services provided in accordance with paragraph (e) of subdivision two of section three hundred sixty-five-a of this title; long term home health care programs services provided in accordance with section three hundred sixty-seven-c of this title; and nursing home transition and diversion services provided in accordance with subdivision six-a of section three hundred sixty-six of this title shall be made as follows:

(i) for services provided on or after January first, nineteen hundred eighty-four through December thirty-first, nineteen hundred eighty-four, seventy-two per centum after first deducting therefrom any federal funds properly received or to be received on account thereof;

(ii) for services provided on or after January first, nineteen hundred eighty-five through December thirty-first, nineteen hundred eighty-five, seventy-six per centum after first deducting therefrom any federal funds properly received or to be received on account thereof; and

(iii) for services provided on or after January first, nineteen hundred eighty-six through March thirty-first, nineteen hundred ninety-four, eighty per centum after first deducting therefrom any federal funds properly received or to be received on account thereof;

(iv) for services provided on or after April first, nineteen hundred ninety-four eighty-one and two hundred thirty-five thousandths per centum after first deducting therefrom any federal funds properly received or to be received on account thereof.

(h) (i) Beginning January first, nineteen hundred eighty-four, one hundred per centum of the amount expended for medical assistance for

those individuals who are eligible pursuant to section three hundred sixty-six of this article as a result of a mental disability as determined by the commissioner in consultation with the commissioner of the office of mental health and the commissioner of the office for people with developmental disabilities and with the approval of the director of the budget after first deducting therefrom any federal funds properly received or to be received on account thereof.

(ii) Notwithstanding any other provision of law to the contrary, on and after the effective date of this subparagraph, the department of health shall make no further recovery or recoupment of monies that were advanced to local social services districts, during the period from April first, nineteen hundred ninety-two to the effective date of this subparagraph, to cover the medical assistance costs pursuant to this paragraph for rehabilitative services for residents of community residences licensed or operated by the office of mental health or for the office for people with developmental disabilities home and community based waiver services.

(i) The full amount expended on behalf of the department for medical assistance furnished to persons described in subdivision eight of section three hundred sixty-five of this article, including the administration thereof, after first deducting therefrom any federal funds properly received or to be received on account thereof.

(j) Notwithstanding any other provision of law, but in conjunction with the provisions of paragraph (g) of subdivision one of this section, reimbursement for the care and services provided to those persons eligible pursuant to subparagraph seven of paragraph (a) of subdivision one of section three hundred sixty-six of this title shall be seventy-five per centum after first deducting therefrom any federal funds properly received or to be received on account thereof.

(k) Notwithstanding any other provision of law, reimbursement by the state for payments made, whether by the department on behalf of a social services district pursuant to section three hundred sixty-seven-b of this article or by a social services district directly, for a supplementary bad debt and charity care adjustment component of rates of payment determined in accordance with subdivision fourteen-a of section twenty-eight hundred seven-c of the public health law for general hospital inpatient hospital services provided in accordance with

paragraph (b) of subdivision two of section three hundred sixty-five-a of this article shall be limited to the amount of federal funds properly received or to be received on account of such expenditures; provided, however, that reimbursement shall be made by the state for the full amount expended for a supplementary bad debt and charity care adjustment for a general hospital operated by the state of New York or by the state university of New York, after first deducting therefrom any federal funds properly received or to be received on account of such expenditure.

(l) Effective January first, nineteen hundred ninety, one hundred per centum of the amount expended for medical assistance for those individuals who are eligible pursuant to paragraphs (n) and (o) of subdivision four of section three hundred sixty-six of this article after first deducting therefrom any federal funds properly received or to be received on account thereof.

(m) Notwithstanding any other provision of law, reimbursement by the state for payments made, whether by the department on behalf of a social services district pursuant to section three hundred sixty-seven-b of this article or by a social services district directly, for a supplementary low income patient adjustment component of rates of payment for a public general hospital determined in accordance with subdivision fourteen-d of section twenty-eight hundred seven-c of the public health law for general hospital inpatient hospital services provided in accordance with paragraph (b) of subdivision two of section three hundred sixty-five-a of this article shall be limited to the amount of federal funds properly received or to be received on account of such expenditures; provided, however, that reimbursement shall be made by the state for the full amount expended for a supplementary low income patient adjustment for a general hospital operated by the state of New York or by the state university of New York, after first deducting therefrom any federal funds properly received or to be received on account of such expenditure.

(n) Notwithstanding any inconsistent provision of law, reimbursement for the amount expended for medical assistance furnished under this title to eligible persons pursuant to a statewide managed care plan or managed care demonstration program, or to eligible persons enrolled in any health maintenance organization or other entity authorized by law to

furnish comprehensive health services pursuant to a plan, shall be reimbursed, after first deducting therefrom any federal funds properly received or to be received on account thereof, in accordance with the following schedule: (i) for services provided for the period April first, nineteen hundred ninety-four to March thirty-first, nineteen hundred ninety-nine, fifty-three and eight hundred seventy-five ten-thousandths percent thereof; and (ii) for services provided for the period April first, nineteen hundred ninety-nine to March thirty-first, two thousand three, fifty percent thereof.

(o) Notwithstanding any other provision of law, reimbursement by the state for payments made, whether by the department on behalf of a social services district pursuant to section three hundred sixty-seven-b of this article or by a social services district directly, for the component of rates of payment for a general hospital determined in accordance with paragraph (s) of subdivision eleven of section twenty-eight hundred seven-c of the public health law for general hospital inpatient hospital services provided in accordance with paragraph (b) of subdivision two of section three hundred sixty-five-a of this article shall be one hundred per centum of the amount expended for medical assistance, after first deducting therefrom any federal funds properly received or to be received on account of such expenditure.

(p) Notwithstanding any other provision of law, reimbursement by the state for payments made, whether by the department on behalf of a social services district pursuant to section three hundred sixty-seven-b of this article or by a social services district directly, for a public general hospital indigent care adjustment payment for a public general hospital determined in accordance with subdivision fourteen-f of section twenty-eight hundred seven-c of the public health law for general hospital inpatient hospital services provided in accordance with paragraph (b) of subdivision two of section three hundred sixty-five-a of this article shall be limited to the amount of federal funds properly received or to be received on account of such expenditures; provided, however, that reimbursement shall be made by the state for the full amount expended for a public general hospital indigent care adjustment for a general hospital operated by the state of New York or by the state university of New York, after first deducting therefrom any federal

funds properly received or to be received on account of such expenditure.

* (q) Notwithstanding any inconsistent provision of this chapter or any other provision of law to the contrary, reimbursement for the amount expended for medical assistance furnished under this title to eligible persons for services provided by a managed long term care plan, shall be based upon a uniform average of expenditures reflecting a mix of primary, acute and long term care services. Such uniform average, or averages, will be determined by the commissioner of health and shall reflect the mix of services as applied to the amounts calculated pursuant to applicable paragraphs (g) and (n) of this subdivision, after first deducting therefrom any federal funds properly received or to be received on account of such expenditure.

* NB Repealed December 31, 2029

* (r) Notwithstanding any other provision of law, reimbursement by the state for payments made, whether by the department of health on behalf of a social services district pursuant to section three hundred sixty-seven-b of this title or by a social services district directly, for medical assistance furnished pursuant to the provisions of subparagraph one of paragraph (q) of subdivision four of section three hundred sixty-six of this title to children born on or before September thirtieth, nineteen hundred eighty-three, shall be made for the full amount expended for such children, after first deducting therefrom any federal funds properly received or to be received on account of such expenditure.

* NB Expired April 1, 2005

* (s) Notwithstanding any other provision of law, reimbursement by the state for payments made, whether by the department of health on behalf of a social services district pursuant to section three hundred sixty-seven-b of this title or by a social services district directly, for medical assistance furnished pursuant to the provisions of subparagraph one of paragraph (t) of subdivision four of section three hundred sixty-six of this title to children, shall be made for the full amount expended for such children, after first deducting therefrom any federal funds properly received or to be received on account of such expenditure.

* NB Expired April 1, 2005

(t) (i) for services provided on or after January first, two thousand three through December thirty-first, two thousand four, fifty percent of the amount expended for health care services under section three hundred sixty-nine-ee of this article, after first deducting therefrom any federal funds properly received or to be received on account thereof;

(ii) for services provided on or after January first, two thousand five, through September thirtieth, two thousand five, seventy-five percent of the amount expended for health care services under section three hundred sixty-nine-ee of this article, after first deducting therefrom any federal funds properly received or to be received on account thereof;

(iii) for services provided on or after October first, two thousand five, through December thirty-first, two thousand five, seventy-five percent of the amount expended by the social services district consisting of the city of New York, and one hundred percent of the amount expended by all other social services districts, for health care services under section three hundred sixty-nine-ee of this article, after first deducting therefrom any federal funds properly received or to be received on account thereof; and

(iv) for services provided on or after January first, two thousand six through December thirty-first, two thousand six, and thereafter, one hundred percent of the amount expended for health care services under section three hundred sixty-nine-ee of this article, after first deducting therefrom any federal funds properly received or to be received on account thereof.

(u) Notwithstanding any other provision of law, the full amount expended for family planning services provided to eligible persons pursuant to subparagraph eleven of paragraph (a) of subdivision one of section three hundred sixty-six of this title, after first deducting therefrom federal funds properly received or to be received on account of such expenditures.

(v) One hundred per centum of the amount expended for the administration of medical assistance furnished pursuant to subparagraphs twelve and thirteen of paragraph (a) of subdivision one of section three hundred sixty-six of this title, after first deducting any federal funds properly received or to be received on account of such expenditures.

(w) One hundred per centum of the amount expended for the

administration of medical assistance furnished pursuant to paragraph (v) of subdivision four of section three hundred sixty-six of this title, after first deducting any federal funds properly received or to be received on account of such expenditures.

(x) One hundred percent of the amount expended for health care services as determined in accordance with paragraph (c) of subdivision ten of section twenty-eight hundred seven-d of the public health law, after first deducting therefrom any federal funds properly received or to be received on account thereof.

(y) One hundred percent of the amount expended for health care services as determined in accordance with paragraph (v-1) of subdivision four of section three hundred sixty-six of this title, after first deducting therefrom any federal funds properly received or to be received on account thereof.

(z) One hundred percent of the amount expended for health care services described in sections three hundred sixty-eight-d and three hundred sixty-eight-e of this title, after first deducting therefrom any federal funds properly received or to be received on account thereof.

2. (a) For the purpose of state reimbursement under this title, expenditures for administration of medical assistance for needy persons shall include expenditures for salaries of employees of local welfare departments, except for those excluded under paragraph (b) of this subdivision; operation, maintenance and service costs; and such other expenditures, such as equipment costs, depreciation charges, and rental values, as may be approved by the department. It shall not include expenditures for capital additions or improvements.

(b) State reimbursement shall not be made for any part of the salary of a social services official, or a chief executive officer of a social services department, whose qualifications do not conform to those fixed by the department, or a city or town service officer; nor shall such reimbursement be made on the salary of a deputy commissioner, or deputy director or an employee, unless his employment is necessary for the administration of medical assistance and his qualifications conform to those fixed by the department.

(c) State reimbursement shall not be made for any part of the salary of a local medical director appointed after the effective date of this

act whose qualifications do not conform to those established pursuant to section three hundred sixty-four of this title.

(d) State reimbursement shall not be made for any part of the cost of those items of care, services, supplies and equipment, and drugs which represent co-payment amounts for which a provider of medical assistance is authorized to charge a recipient in accordance with subdivision six of section three hundred sixty-seven-a of this article.

* 3. For the purpose of state reimbursement for personal care services, such reimbursement to a social services district shall be limited to expenditures for such district's allocation of the statewide need for personal care services, pursuant to section three hundred sixty-seven-d of this chapter.

* NB Expired March 31, 1985

3. (a) Claims for state reimbursement shall be made in such form and manner and at such times and for such periods as the department shall determine.

(b) When certified by the department, state reimbursement shall be paid from the state treasury upon the audit and warrant of the comptroller out of funds made available therefor.

(c) When the moneys allotted to the state by the federal department of health, education and welfare or other authorized federal agency for any quarter shall have been received by the department of taxation and finance, the department shall, as soon as possible, certify to the comptroller the amount to which each public welfare district is entitled for such quarter and such amount shall be paid out of the state treasury after audit by the comptroller to the respective public welfare districts.

(d) The department is authorized in its discretion to make advances to public welfare districts in anticipation of the state reimbursement provided for in this section.

4. Payment of state reimbursement and advances shall be made to the fiscal officer of the public welfare district entitled thereto pursuant to the provisions of this chapter.

§ 368-b. State reimbursement to local health districts; chargebacks.

1. Each approved local health district which enters into a contract with the department of health pursuant to section three hundred sixty-four-a of this title shall submit to the department of health a quarterly report of expenditures for administrative expenses incurred in the performance of such contract. The department of health shall review such expenditures and, upon approval, shall submit the report to the department. Upon receipt of such approved report, there shall be paid to each such district

(a) the amount of federal funds, if any, properly received or to be received on account of such expenditures; and

(b) fifty per centum of the amount expended for such administrative expenses, after first deducting therefrom any federal funds properly received or to be received on account thereof.

2. The department of health shall submit a quarterly report to the department of expenditures for administrative expenses incurred by each of the state health districts in the performance of the cooperative agreement entered into pursuant to section three hundred sixty-four-a of this title. Upon receipt of such report, the department shall deduct the amount of federal funds, if any, properly received or to be received on account of such expenditures from the total amounts reported for each such district. Fifty per centum of the balance shall be apportioned among the public welfare districts served by such district in the ratio that the total expenditures by each such public welfare district for medical assistance for needy persons for the quarter bears to the total expenditures by all such public welfare districts for such quarter. The proportionate share shall be deducted from the next payment due each of such public welfare districts pursuant to section three hundred sixty-eight-a of this title.

§ 368-c. Audit of state rates of payment to providers of health care services. 1. The commissioner may conduct, or have conducted, an audit of financial and statistical reports used for the purpose of establishing rates of payment or fees made in accordance with the medical assistance program.

2. The commissioner shall implement audit procedures and activities to enable the identification of the appropriate rates of payment made through the medical assistance program. Furthermore the commissioner shall conduct an annual review of financial and statistical reports with respect to residential health care facilities certified pursuant to article twenty-eight of the public health law. Where such review indicates substantial noncompliance, as defined in regulation by the commissioner, with the requirements of the medical assistance program the commissioner shall conduct or have conducted an on-site audit. Provided further however, that at least once every four fiscal years an on-site audit shall be conducted.

3. To allow for the recomputation of affected fees or rates of payment, the commissioner shall, as appropriate, supply audit findings to the governmental agency or corporation organized and operating in accordance with article forty-three of the insurance law responsible for the promulgation of fees or rates of reimbursement.

4. The commissioner shall enter into interagency agreements, subject to the approval of the director of the budget, to delineate the respective responsibilities of the department and other governmental agencies with respect to this section.

5. The commissioner is authorized to promulgate regulations to implement the provisions of this section.

§ 368-d. Reimbursement to public school districts and state operated/state supported schools which operate pursuant to article eighty-five, eighty-seven or eighty-eight of the education law.

1. The department of health shall review claims for expenditures made by or on behalf of local public school districts, and state operated/state supported schools which operate pursuant to article eighty-five, eighty-seven or eighty-eight of the education law, for medical care, services and supplies which are furnished to children with

handicapping conditions or such children suspected of having handicapping conditions, as such children are defined in the education law. If approved by the department, payment for such medical care, services and supplies which would otherwise qualify for reimbursement under this title and which are furnished in accordance with this title and the regulations of the department to such children, shall be made in accordance with the department's approved medical assistance fee schedules by payment to such local public school district, and state operated/state supported schools which operate pursuant to article eighty-five, eighty-seven or eighty-eight of the education law, which furnished the care, services or supplies either directly or by contract.

2. Claims for payment under this section shall be made in such form and manner, at such times, and for such periods as the department may require.

3. The provisions of this section shall be of no force and effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this section.

4. The commissioner of health is authorized to contract with one or more entities to conduct a study to determine actual direct and indirect costs incurred by public school districts and state operated/state supported schools which operate pursuant to article eighty-five, eighty-seven or eighty-eight of the education law for medical care, services and supplies, including related special education services and special transportation, furnished to children with handicapping conditions.

5. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner of health is authorized to enter into a contract or contracts under subdivision four of this section without a competitive bid or request for proposal process, provided, however, that:

(a) The department of health shall post on its website, for a period

of no less than thirty days:

(i) A description of the proposed services to be provided pursuant to the contract or contracts;

(ii) The criteria for selection of a contractor or contractors;

(iii) The period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) The manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(b) All reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner of health; and

(c) The commissioner of health shall select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section.

(d) Upon selection of a contractor or contractors, the department of health shall provide written notification of such selection and a summary of the criteria employed in such selection to the chair of the senate finance committee and the chair of the assembly ways and means committee.

6. The commissioner shall evaluate the results of the study conducted pursuant to subdivision four of this section to determine, after identification of actual direct and indirect costs incurred by public school districts, whether it is advisable to claim federal reimbursement for expenditures under this section as certified public expenditures. In the event such claims are submitted, if federal reimbursement received for certified public expenditures on behalf of medical assistance recipients whose assistance and care are the responsibility of a social services district results in a decrease in the state share of annual expenditures pursuant to this section for such recipients, then to the extent that the amount of any such decrease when combined with any decrease in the state share of annual expenditures described in subdivision five of section three hundred sixty-eight-e of this title exceeds one hundred fifty million dollars for the period April 1, 2011 through March 31, 2013, or exceeds one hundred million dollars in state fiscal years 2013-14 and 2014-15, the excess amount shall be transferred

to such public school districts in amounts proportional to their percentage contribution to the statewide savings; an amount equal to thirteen and five hundredths percent of any decrease in the state share of annual expenditures pursuant to this section for such recipients in state fiscal year 2015-16 and any fiscal year thereafter shall be transferred to such public school districts in amounts proportional to their percentage contribution to the statewide savings. Any amount transferred pursuant to this section shall not be considered a revenue received by such social services district in determining the district's actual medical assistance expenditures for purposes of paragraph (b) of section one of part C of chapter fifty-eight of the laws of two thousand five.

§ 368-e. Reimbursement to counties for pre-school children with handicapping conditions. 1. The department of health shall review claims for expenditures made by counties and the city of New York for medical care, services and supplies which are furnished to preschool children with handicapping conditions or such preschool children suspected of having handicapping conditions, as such children are defined in the education law. If approved by the department, payment for such medical care, services and supplies which would otherwise qualify for reimbursement under this title and which are furnished in accordance with this title and the regulations of the department to such children, shall be made in accordance with the department's approved medical assistance fee schedules by payment to such county or city which furnished the care, services or supplies either directly or by contract. Notwithstanding any provisions of law, rule or regulation to the contrary, any clinic or diagnostic and treatment center licensed under article twenty-eight of the public health law, which as determined by the state education department, in conjunction with the department of health, has a less than arms length relationship with the provider approved under section forty-four hundred ten of the education law shall, subject to the approval of the department and based on standards developed by the department, be authorized to directly submit such claims for medical assistance, services or supplies so furnished for any period beginning on or after July first, nineteen hundred ninety-seven.

The actual full cost of the individualized education program (IEP) related services incurred by the clinic shall be reported on the New York State Consolidated Fiscal Report in the education law section forty-four hundred ten program cost center in which the student is placed and the associated medical assistance revenue shall be reported in the same manner.

2. Claims for payment under this section shall be made in such form and manner, at such times, and for such periods as the department may require.

3. The commissioner of health is authorized to contract with one or more entities to conduct a study to determine actual direct and indirect costs incurred by counties for medical care, services and supplies, including related special education services and special transportation, furnished to pre-school children with handicapping conditions.

4. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner of health is authorized to enter into a contract or contracts under subdivision three of this section without a competitive bid or request for proposal process, provided, however, that:

(a) The department of health shall post on its website, for a period of no less than thirty days:

(i) A description of the proposed services to be provided pursuant to the contract or contracts;

(ii) The criteria for selection of a contractor or contractors;

(iii) The period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) The manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(b) All reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner of health; and

(c) The commissioner of health shall select such contractor or

contractors that, in his or her discretion, are best suited to serve the purposes of this section.

(d) Upon selection of a contractor or contractors, the department of health shall provide written notification of such selection and a summary of the criteria employed in such selection to the chair of the senate finance committee and the chair of the assembly ways and means committee.

5. The commissioner shall evaluate the results of the study conducted pursuant to subdivision three of this section to determine, after identification of actual direct and indirect costs incurred by counties for medical care, services, and supplies furnished to pre-school children with handicapping conditions, whether it is advisable to claim federal reimbursement for expenditures under this section as certified public expenditures. In the event such claims are submitted, if federal reimbursement received for certified public expenditures on behalf of medical assistance recipients whose assistance and care are the responsibility of a social services district, results in a decrease in the state share of annual expenditures pursuant to this section for such recipients, then to the extent that the amount of any such decrease when combined with any decrease in the state share of annual expenditures described in subdivision six of section three hundred sixty-eight-d of this title exceeds one hundred fifty million dollars for the period April 1, 2011 through March 31, 2013, or exceeds one hundred million dollars in state fiscal years 2013-14 and 2014-15, the excess amount shall be transferred to such counties in amounts proportional to their percentage contribution to the statewide savings; an amount equal to thirteen and five hundredths percent of any decrease in the state share of annual expenditures pursuant to this section for such recipients in state fiscal year 2015-16 and any fiscal year thereafter shall be transferred to such counties in amounts proportional to their percentage contribution to the statewide savings. Any amount transferred pursuant to this section shall not be considered a revenue received by such social services district in determining the district's actual medical assistance expenditures for purposes of paragraph (b) of section one of part C of chapter fifty-eight of the laws of two thousand five.

The provisions of this section shall be of no force and effect unless all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of health care services provided pursuant to this section.

§ 368-f. Reimbursement of costs under the early intervention program.

1. The department shall review claims for expenditures made by or on behalf of social services districts for the administration of the early intervention program as established under title II-A of article twenty-five of the public health law. If approved by the department, payment for such expenditures, which were made in accordance with this title and the regulations of the department, shall be made by payment to such district, which incurred the expenditure, either directly or by contract, of the amount of any federal funds properly received or to be received on account of such expenditures.

2. Claims for payment under this section shall be made in such form and manner, at such times, and for such periods as the department may require.

3. The department's liability for payment for such administrative expenditures made by or on behalf of districts under this section shall be limited solely to payment of the federal funds received, or to be received, on account of such expenditures. In the event of any subsequent disallowances or recoupment of such funds by a federal governmental agency, upon notification by the commissioner, the comptroller shall withhold or cause to be withheld the amount of such disallowance or recoupment from any moneys otherwise due the district, as state aid pursuant to any provision of law, and the comptroller shall transfer such amount to the credit of the department of social services medical assistance administration program - local assistance account.

§ 369. Application of other provisions. 1. All provisions of this chapter not inconsistent with this title shall be applicable to medical assistance for needy persons and the administration thereof by the

social services districts.

2. (a) Notwithstanding any inconsistent provision of this chapter or other law, no lien may be imposed against the property of any individual prior to his or her death on account of medical assistance paid or to be paid on his or her behalf under this title, except:

(i) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(ii) with respect to the real property of an individual who is an inpatient in a nursing facility, intermediate care facility for individuals with developmental disabilities, or other medical institution, who is not reasonably expected to be discharged from the medical institution and to return home, and who is required, as a condition of receiving services in such institution under the state plan for medical assistance, to spend for costs of medical care all but a minimal amount of his or her income required for personal needs; provided, however, any such lien will dissolve upon the individual's discharge from the medical institution and return home; in addition, no such lien may be imposed on the individual's home if one of the following persons is lawfully residing in the home:

(A) the spouse of the individual;

(B) a child of the individual who is under twenty-one years of age or who is blind or permanently and totally disabled; or

(C) a sibling of the individual who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the date of the individual's admission to the medical institution.

(b) (i) Notwithstanding any inconsistent provision of this chapter or other law, no adjustment or recovery may be made against the property of any individual on account of any medical assistance correctly paid to or on behalf of an individual under this title, except that recoveries must be pursued:

(A) upon the sale of the property subject to a lien imposed on account of medical assistance paid to an individual described in clause (ii) of paragraph (a) of this subdivision, or from the estate of such individual; and

(B) from the estate of an individual who was fifty-five years of age

or older when he or she received such assistance, provided that for individuals whose eligibility for medical assistance was based on paragraph (b) of subdivision one of section three hundred sixty-six of this title, recovery shall be limited to medical assistance consisting of nursing facility services, home and community-based services, and related hospital and prescription drug services.

(ii) Any such adjustment or recovery shall be made only after the death of the individual's surviving spouse, if any, and only at a time when the individual has no surviving child who is under twenty-one years of age or is blind or permanently and totally disabled, provided, however, that nothing herein contained shall be construed to prohibit any adjustment or recovery for medical assistance furnished pursuant to subdivision three of section three hundred sixty-six of this chapter.

(iii) In the case of a lien on an individual's home, any such adjustment or recovery shall be made only when:

(A) no sibling of the individual who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission to a medical institution referred to in subparagraph (ii) of paragraph (a) of subdivision two of this section, and is lawfully residing in such home and has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution, and

(B) no child of the individual who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to a medical institution referred to in subparagraph (ii) of paragraph (a) of subdivision two of this section, and who establishes to the satisfaction of the state that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution, and is lawfully residing in such home and has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

(c) Nothing contained in this subdivision shall be construed to alter or affect the right of a social services official to recover the cost of medical assistance provided to an injured person in accordance with the provisions of section one hundred four-b of this chapter.

(d) Where a recovery or adjustment is made pursuant to this title with respect to a case in a federally-aided category of medical assistance, a

part of the net amount resulting from such recovery or adjustment shall be paid or credited to the federal government pursuant to federal law and the regulations of the federal department of health and human services.

3. The department and any social services district is hereby authorized to maintain an action subject to sections one hundred one and one hundred four of this chapter to collect from either a trustee, creator, or creator's spouse any beneficial interest of either the creator or creator's spouse in any trust, other than a testamentary trust, to reimburse such department or district for the costs of medical assistance furnished to, or on behalf of, a creator or creator's spouse. For the purpose of this subdivision, the beneficial interest of the creator or creator's spouse includes the income and any principal amounts to which the creator or creator's spouse would have been entitled by the terms of such trust by right or in the discretion of the trustee, assuming the full exercise of discretion by the trustee for the distribution of the maximum amount to either the creator or the creator's spouse.

4. Any inconsistent provision of this chapter or other law notwithstanding, all information received by social services and public health officials and service officers concerning applicants for and recipients of medical assistance may be disclosed or used only for purposes directly connected with the administration of medical assistance for needy persons.

5. The requirements of this section with respect to adjustments and recoveries of medical assistance correctly paid shall be waived in cases of undue hardship, as determined pursuant to the regulations of the department in accordance with criteria established by the secretary of the federal department of health and human services.

6. For purposes of this section, the term "estate" means all real and personal property and other assets included within the individual's estate and passing under the terms of a valid will or by intestacy.

7. Notwithstanding any provision of law to the contrary, the department shall, when it determines necessary program features are in place, assume sole responsibility for commencing actions or proceedings in accordance with the provisions of this section, sections one hundred one, one hundred four, one hundred four-b, paragraph (a) of subdivision three of section three hundred sixty-six, subparagraph one of paragraph (h) of subdivision four of section three hundred sixty-six, and paragraph (b) of subdivision two of section three hundred sixty-seven-a of this chapter, to recover the cost of medical assistance furnished pursuant to this title and title eleven-D of this article. The department is authorized to contract with an entity that shall conduct activities on behalf of the department pursuant to this subdivision. Prior to assuming such responsibility from a social services district, the department of health shall, in consultation with the district, define the scope of the services the district will be required to perform on behalf of the department of health pursuant to this subdivision.

TITLE 11-B
**HEALTH INSURANCE CONTINUATION PROGRAM
FOR PERSONS WITH AIDS**

Section 369-k. Definitions.

369-l. Establishment of program.

369-m. Program eligibility and operations.

369-n. Relationship of program to medical assistance program.

§ 369-k. Definitions. As used in this section:

1. "Health insurance" shall mean insurance or an employee benefit plan against sickness, ailment or bodily injury of the employee and, if covered, his or her dependents, other than (i) insurance or an employee benefit plan providing disability benefits; or (ii) medical assistance benefits received under title eleven of this article.

2. "Health insurance costs" means the premiums or contributions paid

for health insurance by or on behalf of a person with AIDS.

3. "Household" means the person with AIDS and all other persons residing in the same dwelling for whom such person would be responsible pursuant to section one hundred one of this chapter, or for whom such person has assumed responsibility.

4. "Persons with AIDS" means persons who are diagnosed as having acquired immune deficiency syndrome (AIDS) or who have human immunodeficiency virus (HIV)-related illness, as defined in regulation by the state department of health.

5. "Poverty line" means the federal income official poverty line (as defined and annually revised by the federal office of management and budget).

6. "Program" means the health insurance continuation program for persons with AIDS established by section three hundred sixty-nine-l of this article.

§ 369-l. Establishment of program. 1. There is hereby established within the department of social services the health insurance continuation program for persons with AIDS.

2. Notwithstanding any inconsistent provision of law, the commissioner, subject to the approval of the director of the budget, may apply for appropriate waivers under federal law and regulation or take other actions to secure federal financial participation in the costs of the program; may waive or modify any provisions of this chapter or regulation of the department to implement this title; or may promulgate such regulations as necessary to implement this title.

§ 369-m. Program eligibility and operations. 1. In accordance with regulations of the commissioner, a social services district shall pay all or part of the health insurance costs on behalf of a person with

AIDS who:

(a) is unemployed, or, if employed, currently is ineligible to participate in health insurance through his or her current employer or such employer offers no such plan; and

(b) participated in the plan of health insurance provided by his or her prior employer and is eligible to continue or convert his or her participation in such plan by assuming the health insurance costs associated with such plan although no longer employed by such employer; and

(c) resides in a household whose household income is less than or equal to one hundred eighty-five percent of the poverty line.

2. For purposes of determining eligibility under this title, household income shall be determined by use of the same methodology used to determine eligibility for federal supplemental security income benefits, provided that costs incurred for medical or remedial care shall not be taken into account in determining household income; and, provided further, that any resources available to such household shall not be considered nor required to be applied to the payment of health care expenses.

§ 369-n. Relationship of program to medical assistance program. 1. Any person eligible for medical assistance benefits under title eleven of this article or who would be eligible for such benefits if an application were to be made pursuant to section three hundred sixty-six of this article shall not be eligible for the payment of all or part of such person's health insurance costs under this program. If all members of a household can establish eligibility for medical assistance benefits under the excess income program by use of paid or incurred bills, no person in that household shall be eligible for the payment of all or part of such person's health insurance costs under this program.

2. Notwithstanding any inconsistent provision of law, expenditures incurred by social services districts under this title related to program expenses shall be considered expenditures under the program of medical assistance for needy persons under title eleven of this article

and there shall be paid to each such district fifty percent of the amount expended by such district under this title, and for the administration thereof, after first deducting therefrom any federal funds properly received or to be received on account thereof.

TITLE 11-C

MEDICAID DRUG UTILIZATION REVIEW

Section 369-aa. Definitions.

369-bb. Drug utilization review board.

369-cc. Retrospective and prospective drug utilization review.

§ 369-aa. Definitions. In this article:

1. "Drug utilization review or (DUR)" shall mean the program designed to measure and to assess on a retrospective and a prospective basis the proper use of outpatient drugs in the medicaid program. Such program shall be in addition to the activities of the department with respect to the detection of fraud and abuse in the medical assistance program, the sanctioning of providers determined to have engaged in unacceptable practices under the medical assistance program, and the recovery of overpayments of medical assistance made to providers under the medical assistance program.

2. "Board" shall mean the drug utilization review board created under this title.

3. "Intervention" shall mean a form of communication utilized by the DUR board with a prescriber or pharmacist to inform about or to influence prescribing or dispensing practices.

4. "SURS" shall mean the surveillance utilization review system of medicaid.

5. "Retrospective DUR" shall mean that part of the drug utilization review program that assesses or measures drug use based on an historical

review of drug use data against predetermined and explicit criteria and standards on an ongoing basis with professional input.

6. "Prospective DUR" shall mean that part of the drug utilization review program that is to occur before the drug is dispensed that is designed to screen for potential drug therapy problems based on explicit and predetermined standards.

7. "Criteria" shall mean those predetermined and explicitly accepted elements that are used to measure drug use on an ongoing basis to determine if the use is appropriate, medically necessary, and not likely to result in adverse medical outcomes.

8. "Compendia" shall mean those resources widely accepted by the medical profession in the efficacious use of drugs which is based on, but not limited to, these sources: "American Hospital Formulary Services Drug Information," "U.S. Pharmacopeia - Drug Information," "AMA Drug Evaluations," the peer-reviewed medical literature, and information provided from the manufacturers of drug products.

9. "Standards" shall mean the acceptable range of deviation from the criteria that reflects appropriate medical practice and that is tested on the medicaid recipient database.

10. "Therapeutic duplication" shall mean the prescribing and dispensing of the same drug or of two or more drugs from the same therapeutic class where overlapping time periods of drug administration are involved and where such prescribing or dispensing is not medically indicated.

11. "Drug-disease contraindications" shall mean the occurrence where the therapeutic effect of a drug is adversely altered by the presence of another disease condition.

12. "Drug-interactions" shall mean the occurrence where two or more drugs taken by a recipient lead to clinically significant toxicity that is characteristic of one or any of the drugs present or that leads to

the interference with the effectiveness of one or any of the drugs.

13. "Therapeutic appropriateness" shall mean drug prescribing and dispensing based on rational drug therapy that is consistent with criteria and standards of the compendia.

14. "Overutilization or underutilization" shall mean the use of a drug in such quantities where the desired therapeutic goal is not achieved.

15. "Appropriate and medically necessary" shall mean drug prescribing and dispensing and patient medication usage in conformity with the criteria and standards developed under this chapter.

16. "Step therapy" shall mean the practice of beginning drug therapy for a medical condition with the most medically appropriate and cost effective therapy and progressing to other drugs as medically necessary.

§ 369-bb. Drug utilization review board. 1. A twenty-three-member drug utilization review board is hereby created in the department. The board is responsible for the establishment and implementation of medical standards and criteria for the retrospective and prospective DUR program.

2. The members of the DUR board shall be appointed by the commissioner and shall serve a three-year term. Members may be reappointed upon the completion of other terms. The membership shall be comprised of the following:

(a) Six persons licensed and actively engaged in the practice of medicine in the state, with expertise in the areas of mental health, HIV/AIDS, geriatrics, pediatrics or internal medicine and who may be selected based on input from professional associations and/or advocacy groups in New York state.

(b) Six persons licensed and actively practicing in pharmacy in the state who may be selected based on input from professional associations and/or advocacy groups in New York state.

(c) Two persons with expertise in drug utilization review who are

health care professionals licensed under Title VIII of the education law at least one of whom is a pharmacologist.

(d) Three persons that are consumers or consumer representatives of organizations with a regional or statewide constituency and who have been involved in activities related to health care consumer advocacy, including issues affecting Medicaid or EPIC recipients.

(e) One person licensed and actively practicing as a nurse practitioner or midwife.

(f) Two persons who are health care economists.

(g) One person who is an actuary.

(h) One person representing the department of financial services.

(i) The commissioner shall designate a person from the department to serve as chairperson of the board.

3. The appointed members to the board, or its agents shall have no sanctions against them by medicare or medicaid.

4. The appointments to this board shall be made so that the length of the terms are staggered. In making the appointments, the commissioner shall consider geographic balance in the representation on the board.

5. (a) The functions, powers and duties of the former pharmacy and therapeutics committee as established in article two-A of the public health law shall now be considered a function of the drug utilization review board, including but not limited to:

(i) conducting an executive session for the purpose of receiving and evaluating drug pricing information related to supplemental rebates, or receiving and evaluating trade secrets, or other information which, if disclosed, would cause substantial injury to the competitive position of the manufacturer; and

(ii) evaluating and providing recommendations to the commissioner of health on other issues relating to pharmacy services under Medicaid or EPIC, including, but not limited to: therapeutic comparisons; enhanced use of generic drug products; enhanced targeting of physician prescribing patterns; and

(iii) collaborating with managed care organizations to address drug utilization concerns and to implement consistent management strategies

across the fee-for-service and managed care pharmacy benefits.

(b) Any business or other matter undertaken or commenced by the pharmacy and therapeutics committee pertaining to or connected with the functions, powers, obligations and duties are hereby transferred and assigned to the drug utilization review board and pending on the effective date of this subdivision, may be conducted and completed by the drug utilization review board in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the pharmacy and therapeutics committee. All books, papers, and property of the pharmacy and therapeutics committee shall continue to be maintained by the drug utilization review board.

(c) All rules, regulations, acts, orders, determinations, and decisions of the pharmacy and therapeutics committee pertaining to the functions and powers herein transferred and assigned, in force at the time of such transfer and assumption, shall continue in full force and effect as rules, regulations, acts, orders, determinations and decisions of the drug utilization review board until duly modified or abrogated by the commissioner of health.

6. Members of the DUR utilization review board and all its employees and agents shall be deemed to be an "employee" for purposes of section seventeen of the public officers law.

7. The department shall provide administrative support to the DUR board.

8. The duties of the DUR board are as follows:

(a) The development and application of the predetermined criteria and standards to be used in retrospective and prospective DUR that ensure that such criteria and standards are based on the compendia and that they are developed with professional input in a consensus fashion with provisions for timely revisions and assessments as necessary. Further, that the DUR standards shall reflect the appropriate practices of physicians in order to monitor:

- (i) Therapeutic appropriateness;
- (ii) Overutilization or underutilization;
- (iii) Therapeutic duplication;

- (iv) Drug-disease contraindications;
- (v) Drug-drug interactions;
- (vi) Incorrect drug dosage or duration of drug treatment; and
- (vii) Clinical abuse/misuse.

(b) The development, selection, application, and assessment of interventions or remedial strategies for physicians, pharmacists, and recipients that are educational and not punitive in nature to improve the quality of care including:

(i) Information disseminated to physicians and pharmacists to ensure that physicians and pharmacists are aware of the board's duties and powers;

(ii) Written, oral, or electronic reminders of patient-specific or drug-specific information that are designed to ensure recipient, physician, and pharmacist confidentiality, and suggested changes in the prescribing or dispensing practices designed to improve the quality of care;

(iii) Use of face-to-face discussions between experts in drug therapy and the prescriber or pharmacist who has been targeted for educational intervention;

(iv) Intensified reviews or monitoring of selected prescribers or pharmacists;

(v) The creation of an educational program using data provided through DUR to provide for active and ongoing educational outreach programs to improve prescribing and dispensing practices as provided in this subdivision. (This may be done directly or through contract with other entities);

(vi) The timely evaluation of interventions to determine if the interventions have improved the quality of care; and

(vii) The review of case profiles prior to the conducting of an intervention.

(c) The publication of an annual report which shall be subject to the department's comment prior to its issuance to the federal department of health and human services by December first of each year. The annual report also shall be submitted to the governor and the legislature before December first of each year. The report shall include the following information:

- (i) A description of the activities of the board, including the nature

and scope of the prospective and retrospective drug use review programs;

(ii) A summary of the interventions used;

(iii) An assessment of the impact of these educational interventions in quality of care;

(iv) An estimate of the cost savings generated as a result of such program; and

(v) Recommendations for program improvement.

(d) The development of a working agreement for the DUR board with related boards or agencies, including, but not limited to: the board of pharmacy, the board of medicine, the SURS staff, and staff of the department of health and the office of mental health, in order to clarify the areas of responsibility for each where such areas may overlap.

(e) The establishment of a process where physicians or pharmacists will have the opportunity to submit responses to the DUR educational letters.

(f) The publication and dissemination of educational information to physicians and pharmacists on the DUR board and the DUR program to include information on:

(i) Identifying and reducing the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and recipients;

(ii) Potential or actual severe/adverse reactions to drugs;

(iii) Therapeutic appropriateness;

(iv) Overutilization or underutilization;

(v) Appropriate use of generics;

(vi) Therapeutic duplication;

(vii) Drug-disease contraindications;

(viii) Drug-drug interactions;

(ix) Incorrect drug dosage/duration of drug treatments;

(x) Drug allergy interactions; and

(xi) Clinical abuse/misuse.

(g) The evaluation of specific drugs submitted to the board for review pursuant to section two hundred eighty of the public health law, and the formulation of recommended target supplemental rebates, in accordance with the standards established in such section.

(h) The adoption and implementation of procedures designed to ensure

the confidentiality of any information collected, stored, retrieved, assessed or analyzed by the DUR board, staff to the board, or contractors to the DUR program, that identifies individual physicians, pharmacists, or recipients. The board may have access to identifying information for purposes of carrying out intervention activities, but such identifying information may not be released to anyone other than a member of the DUR board or the department and its agents.

(i) The improper release of identifying information in violation of this article may subject that person to criminal or civil penalties.

(j) The board may release cumulative non-identifying information for purposes of legitimate research.

9. The relationship of the DUR board to the department is as follows:

(a) The department shall monitor the DUR board's compliance to federal and state statute and regulation.

(b) The DUR board shall serve at the discretion of the commissioner.

(c) The department shall have authority on all fiscal matters relating to the DUR program.

(d) The department shall have authority on all administrative matters relating to the administration of the medical assistance program within the DUR program.

(e) The DUR board shall have responsibility for all medical matters relating to the DUR program.

(f) The DUR board may utilize medical consultants and review committees as necessary, subject to department approval.

§ 369-cc. Retrospective and prospective drug utilization review. The department, in cooperation with the DUR board, shall include in its state plan the creation and implementation of a retrospective and prospective DUR program for medicaid outpatient drugs to ensure that the prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

1. The retrospective and prospective DUR program shall be operated under the guidelines and procedures established by the DUR board.

2. The retrospective DUR program shall be based on the guidelines established by the DUR board and shall use the mechanized drug claims processing and information retrieval system to analyze claims data to:

(a) Identify patterns of gross overuse, and inappropriate or medically unnecessary care.

(b) Assess data on drug use against explicit predetermined standards that are based on the compendia and other sources to monitor the following:

(i) Therapeutic appropriateness;

(ii) Overutilization or underutilization;

(iii) Therapeutic duplication;

(iv) Drug-disease contraindications;

(v) Drug-drug interactions;

(vi) Incorrect drug dosage or duration of drug treatment; and

(vii) Clinical abuse/misuse.

3. The prospective DUR program shall be based on the guidelines established by the DUR board not in conflict with education or social services laws and shall provide that prior to the prescription being filled or delivered, a review will be conducted by the pharmacist at the point of sale to screen for potential drug therapy problems resulting from:

(a) Therapeutic duplication;

(b) Drug-drug interactions;

(c) Incorrect dosage/duration of treatment;

(d) Drug-allergy interactions;

(e) Clinical abuse/misuse.

In conducting the prospective DUR, the pharmacist may not alter the prescribed outpatient drug therapy without the consent of the prescriber who prescribed that therapy.

4. (a) The commissioner, through the prospective DUR program, may require step therapy when there is more than one drug appropriate to treat a medical condition. The purpose of step therapy is to encourage the use of medically appropriate, cost effective drugs when clinically indicated and to limit use of alternative drug therapies unless certain clinical requirements are met. The DUR board shall recommend guidelines

for specific diagnoses and therapy regimens within which practitioners may prescribe drugs without the requirement for prior authorization of those drugs. In establishing these guidelines, the board shall consider clinical effectiveness, safety, and cost effectiveness. Prior authorization under this paragraph shall be obtained under section two hundred seventy-three of the public health law.

(b) The commissioner, through the prospective DUR program, may from time to time limit the quantity, frequency, and duration of drug therapy, using guidelines developed by the DUR board. The DUR board shall develop clinical prescribing guidelines relating to quantity, frequency, and duration of drug therapy for the commissioner's use under this paragraph. In establishing these guidelines, the board shall consider clinical effectiveness, safety, and cost effectiveness. Prior authorization under this paragraph shall be obtained under section two hundred seventy-three of the public health law. Exceptions to any prior authorization imposed as a result of these guidelines shall include, but need not be limited to, provision for emergency circumstances where a medical condition requires alleviation of severe pain or which threatens to cause disability or to take a life if not promptly treated.

TITLE 11-D ESSENTIAL PLAN

Section 369-gg. Basic health program.

369-ii. 1332 state innovation program.

§ 369-gg. Basic health program. 1. Definitions. For purposes of this section:

(a) "Eligible organization" means an insurer licensed pursuant to article thirty-two or forty-two of the insurance law, a corporation or an organization under article forty-three of the insurance law, or an organization certified under article forty-four of the public health law, including providers certified under section forty-four hundred three-e of the public health law;

(b) "Approved organization" means an eligible organization approved by the commissioner to underwrite a basic health insurance plan pursuant to

this title;

* (c) "Health care services" means (i) the services and supplies as defined by the commissioner in consultation with the superintendent of financial services, and shall be consistent with and subject to the essential health benefits as defined by the commissioner in accordance with the provisions of the patient protection and affordable care act (P.L. 111-148) and consistent with the benefits provided by the reference plan selected by the commissioner for the purposes of defining such benefits, and shall include coverage of and access to the services of any national cancer institute-designated cancer center licensed by the department of health within the service area of the approved organization that is willing to agree to provide cancer-related inpatient, outpatient and medical services to all enrollees in approved organizations' plans in such cancer center's service area under the prevailing terms and conditions that the approved organization requires of other similar providers to be included in the approved organization's network, provided that such terms shall include reimbursement of such center at no less than the fee-for-service medicaid payment rate and methodology applicable to the center's inpatient and outpatient services; and (ii) dental and vision services as defined by the commissioner;

* NB Effective until January 1, 2031

* (c) "Health care services" means (i) the services and supplies as defined by the commissioner in consultation with the superintendent of financial services, and shall be consistent with and subject to the essential health benefits as defined by the commissioner in accordance with the provisions of the patient protection and affordable care act (P.L. 111-148) and consistent with the benefits provided by the reference plan selected by the commissioner for the purposes of defining such benefits, and shall include coverage of and access to the services of any national cancer institute-designated cancer center licensed by the department of health within the service area of the approved organization that is willing to agree to provide cancer-related inpatient, outpatient and medical services to all enrollees in approved organizations' plans in such cancer center's service area under the prevailing terms and conditions that the approved organization requires of other similar providers to be included in the approved organization's

network, provided that such terms shall include reimbursement of such center at no less than the fee-for-service medicaid payment rate and methodology applicable to the center's inpatient and outpatient services; (ii) dental and vision services as defined by the commissioner; and (iii) as defined by the commissioner and subject to federal approval, certain services and supports provided to enrollees eligible pursuant to subparagraph one of paragraph (g) of subdivision one of section three hundred sixty-six of this article who have functional limitations and/or chronic illnesses that have the primary purpose of supporting the ability of the enrollee to live or work in the setting of their choice, which may include the individual's home, a worksite, or a provider-owned or controlled residential setting;

* NB Effective January 1, 2031

(d) "Qualified health plan" means a health plan that meets the criteria for certification described in § 1311(c) of the Patient Protection and Affordable Care Act (P.L. 111-148), and is offered to individuals through the health insurance exchange marketplace; and

* (e) "Basic health insurance plan" means a standard health plan providing health care services, separate and apart from qualified health plans, that is issued by an approved organization and certified in accordance with this section.

* NB Repealed if federal approval is withdrawn or 42 U.S.C. 18051 is repealed

* (e) "Basic health insurance plan" means a standard health plan, separate and apart from qualified health plans, that is issued by an approved organization and certified in accordance with this section.

* NB Effective if federal approval is withdrawn or 42 U.S.C. 18051 is repealed

2. Authorization. If it is in the financial interest of the state to do so, the commissioner of health is authorized, with the approval of the director of the budget, to establish a basic health program. The commissioner's authority pursuant to this section is contingent upon obtaining and maintaining all necessary approvals from the secretary of health and human services to offer a basic health program in accordance with 42 U.S.C. 18051. The commissioner may take any and all actions necessary to obtain such approvals. Notwithstanding the foregoing,

within ninety days of the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision the commissioner shall submit a report to the temporary president of the senate and the speaker of the assembly detailing a contingency plan in the event eligibility rules or regulations are modified or repealed; or in the event federal payment is reduced from ninety five percent of the premium tax credits and cost-sharing reductions pursuant to the patient protection and affordable care act (P.L. 111-148). The contingency plan shall be implemented within ninety days of the above stated events or the time period specified in federal law.

3. Eligibility. A person is eligible to receive coverage for health care services pursuant to this title if he or she:

(a) resides in New York state and is under sixty-five years of age;

(b) is not eligible for medical assistance under title eleven of this article or for the child health insurance plan described in title one-A of article twenty-five of the public health law;

(c) is not eligible for minimum essential coverage, as defined in section 5000A(f) of the Internal Revenue Service Code of 1986, or is eligible for an employer-sponsored plan that is not affordable, in accordance with section 5000A of such code; and

* (d) (i) except as provided by subparagraph (ii) of this paragraph, has household income at or below two hundred percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; and has household income that exceeds one hundred thirty-three percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; however, MAGI eligible noncitizens lawfully present in the United States with household incomes at or below one hundred thirty-three percent of the federal poverty line shall be eligible to receive coverage for health care services pursuant to the provisions of this title if such noncitizen would be ineligible for medical assistance under title eleven of this article due to their immigration status;

(ii) subject to federal approval and the use of state funds, unless the commissioner may use funds under subdivision seven of this section, has household income at or below two hundred fifty percent of the

federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; and has household income that exceeds one hundred thirty-three percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; however, MAGI eligible aliens lawfully present in the United States with household incomes at or below one hundred thirty-three percent of the federal poverty line shall be eligible to receive coverage for health care services pursuant to the provisions of this title if such alien would be ineligible for medical assistance under title eleven of this article due to their immigration status;

(iii) subject to federal approval if required and the use of state funds, unless the commissioner may use funds under subdivision seven of this section, a pregnant individual who is eligible for and receiving coverage for health care services pursuant to this title is eligible to continue to receive health care services pursuant to this title during the pregnancy and for a period of one year following the end of the pregnancy without regard to any change in the income of the household that includes the pregnant individual, even if such change would render the pregnant individual ineligible to receive health care services pursuant to this title;

(iv) subject to federal approval, a child born to an individual eligible for and receiving coverage for health care services pursuant to this title who would be eligible for coverage pursuant to subparagraphs (2) or (4) of paragraph (b) of subdivision 1 of section three hundred and sixty-six of the social services law shall be deemed to have applied for medical assistance and to have been found eligible for such assistance on the date of such birth and to remain eligible for such assistance for a period of one year.

An applicant who fails to make an applicable premium payment, if any, shall lose eligibility to receive coverage for health care services in accordance with time frames and procedures determined by the commissioner.

* NB Repealed if federal approval is withdrawn or 42 U.S.C. 18051 is repealed

* (d) (i) except as provided by subparagraph (ii) of this paragraph,

has household income at or below two hundred percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; and has household income that exceeds one hundred thirty-three percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; however, MAGI eligible noncitizens lawfully present in the United States with household incomes at or below one hundred thirty-three percent of the federal poverty line shall be eligible to receive coverage for health care services pursuant to the provisions of this title if such noncitizen would be ineligible for medical assistance under title eleven of this article due to their immigration status;

(ii) subject to federal approval and the use of state funds, unless the commissioner may use funds under subdivision seven of this section, has household income at or below two hundred fifty percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; and has household income that exceeds one hundred thirty-three percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; however, MAGI eligible aliens lawfully present in the United States with household incomes at or below one hundred thirty-three percent of the federal poverty line shall be eligible to receive coverage for health care services pursuant to the provisions of this title if such alien would be ineligible for medical assistance under title eleven of this article due to their immigration status;

(iii) subject to federal approval if required and the use of state funds, unless the commissioner may use funds under subdivision seven of this section, a pregnant individual who is eligible for and receiving coverage for health care services pursuant to this title is eligible to continue to receive health care services pursuant to this title during the pregnancy and for a period of one year following the end of the pregnancy without regard to any change in the income of the household that includes the pregnant individual, even if such change would render the pregnant individual ineligible to receive health care services pursuant to this title;

(iv) subject to federal approval, a child born to an individual

eligible for and receiving coverage for health care services pursuant to this title who would be eligible for coverage pursuant to subparagraphs (2) or (4) of paragraph (b) of subdivision 1 of section three hundred and sixty-six of the social services law shall be deemed to have applied for medical assistance and to have been found eligible for such assistance on the date of such birth and to remain eligible for such assistance for a period of one year.

An applicant who fails to make an applicable premium payment shall lose eligibility to receive coverage for health care services in accordance with time frames and procedures determined by the commissioner.

* NB Effective if federal approval is withdrawn or 42 U.S.C. 18051 is repealed

4. Enrollment. (a) Subject to federal approval, the commissioner is authorized to establish an application and enrollment procedure for prospective enrollees. Such procedure shall include a verification system for applicants, which shall be consistent with 42 USC § 1320b-7.

(b) Such procedure shall allow for continuous enrollment for enrollees to the basic health program where an individual may apply and enroll for coverage at any point.

(c) Upon an applicant's enrollment in a basic health insurance plan, coverage for health care services pursuant to the provisions of this title shall be prospective. Coverage shall begin in a manner consistent with the requirements for qualified health plans offered through the health insurance exchange marketplace, as delineated in federal regulation at 42 CFR 155.420(b)(1) or any successor regulation thereof.

(d) A person who has enrolled for coverage pursuant to this title, and who loses eligibility to enroll in the basic health program for a reason other than citizenship status, lack of state residence, failure to provide a valid social security number, providing inaccurate information that would affect eligibility when requesting or renewing health coverage pursuant to this title, or failure to make an applicable premium payment, before the end of a twelve month period beginning on the effective date of the person's initial eligibility for coverage, or before the end of a twelve month period beginning on the date of any

subsequent determination of eligibility, shall have his or her eligibility for coverage continued until the end of such twelve month period, provided that the state receives federal approval for using funds from the basic health program trust fund, established under section 97-0000 of the state finance law, for the costs associated with such assistance.

* 5. Premiums and cost sharing. (a) Subject to federal approval, the commissioner shall establish premium payments enrollees shall pay to approved organizations for coverage of health care services pursuant to this title. No payment is required for individuals with a household income at or below two hundred percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size.

(b) The commissioner shall establish cost sharing obligations for enrollees, subject to federal approval. There shall be no cost-sharing obligations for enrollees for dental and vision services as defined in subparagraph (ii) of paragraph (c) of subdivision one of this section; services and supports as defined in subparagraph (iii) of paragraph (c) of subdivision one of this section; and health care services authorized under subparagraphs (iii) and (iv) of paragraph (d) of subdivision three of this section.

* NB Repealed if federal approval is withdrawn or 42 U.S.C. 18051 is repealed

* 5. Premiums and cost sharing. (a) Subject to federal approval, the commissioner shall establish premium payments enrollees shall pay to approved organizations for coverage of health care services pursuant to this title. Such premium payments shall be established in the following manner:

(i) up to twenty dollars monthly for an individual with a household income above one hundred and fifty percent of the federal poverty line but at or below two hundred percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size; and

(ii) no payment is required for individuals with a household income at or below one hundred and fifty percent of the federal poverty line defined and annually revised by the United States department of health and human services for a household of the same size.

(b) The commissioner shall establish cost sharing obligations for enrollees, subject to federal approval. There shall be no cost-sharing obligations for services and supports as defined in subparagraph (iii) of paragraph (c) of subdivision one of this section; and health care services authorized under subparagraphs (iii) and (iv) of paragraph (d) of subdivision three of this section.

* NB Effective if federal approval is withdrawn or 42 U.S.C. 18051 is repealed

6. Rates of payment. (a) The commissioner shall select the contract with an independent actuary to study and recommend appropriate reimbursement methodologies for the cost of health care service coverage pursuant to this title. Such independent actuary shall review and make recommendations concerning appropriate actuarial assumptions relevant to the establishment of reimbursement methodologies, including but not limited to; the adequacy of rates of payment in relation to the population to be served adjusted for case mix, the scope of health care services approved organizations must provide, the utilization of such services and the network of providers required to meet state standards.

(b) Upon consultation with the independent actuary and entities representing approved organizations, the commissioner shall develop reimbursement methodologies and fee schedules for determining rates of payment, which rate shall be approved by the director of the division of the budget, to be made by the department to approved organizations for the cost of health care services coverage pursuant to this title. Such reimbursement methodologies and fee schedules may include provisions for capitation arrangements.

(c) The commissioner shall have the authority to promulgate regulations, including emergency regulations, necessary to effectuate the provisions of this subdivision.

(d) The department shall require the independent actuary selected pursuant to paragraph (a) of this subdivision to provide a complete actuarial report, along with all actuarial assumptions made and all other data, materials and methodologies used in the development of rates for the basic health plan authorized under this section. Such report shall be provided annually to the temporary president of the senate and the speaker of the assembly.

* 7. Any funds transferred by the secretary of health and human services to the state pursuant to 42 U.S.C. 18051(d) shall be deposited in trust. Funds from the trust shall be used for providing health benefits through an approved organization, which, at a minimum, shall include essential health benefits as defined in 42 U.S.C. 18022(b); to reduce the premiums, if any, and cost sharing of participants in the basic health program; or for such other purposes as may be allowed by the secretary of health and human services. Health benefits available through the basic health program shall be provided by one or more approved organizations pursuant to an agreement with the department of health and shall meet the requirements of applicable federal and state laws and regulations.

* NB Repealed if federal approval is withdrawn or 42 U.S.C. 18051 is repealed

* 7. Any funds transferred by the secretary of health and human services to the state pursuant to 42 U.S.C. 18051(d) shall be deposited in trust. Funds from the trust shall be used for providing health benefits through an approved organization, which, at a minimum, shall include essential health benefits as defined in 42 U.S.C. 18022(b); to reduce the premiums and cost sharing of participants in the basic health program; or for such other purposes as may be allowed by the secretary of health and human services. Health benefits available through the basic health program shall be provided by one or more approved organizations pursuant to an agreement with the department of health and shall meet the requirements of applicable federal and state laws and regulations.

* NB Effective if federal approval is withdrawn or 42 U.S.C. 18051 is repealed

8. An individual who is lawfully admitted for permanent residence, permanently residing in the United States under color of law, or who is a non-citizen in a valid nonimmigrant status, as defined in 8 U.S.C. 1101(a)(15), and who would be ineligible for medical assistance under title eleven of this article due to his or her immigration status if the provisions of section one hundred twenty-two of this chapter were applied, shall be considered to be ineligible for medical assistance for purposes of paragraphs (b) and (c) of subdivision three of this section.

9. Reporting. The commissioner shall submit a report to the temporary president of the senate and the speaker of the assembly annually by December thirty-first. The report shall include, at a minimum, an analysis of the basic health program and its impact on the financial interest of the state; its impact on the health benefit exchange including enrollment and premiums; its impact on the number of uninsured individuals in the state; its impact on the Medicaid global cap; and the demographics of basic health program enrollees including age and immigration status.

TITLE 12

COMMUNITY CENTERS AND SERVICES FOR SENIOR CITIZENS

Section 370. Community centers and services for senior citizens; when social services official to furnish.

370-a. Federal grants.

370-b. State reimbursement.

§ 370. Community centers and services for senior citizens; when social services official to furnish. 1. A social services official of a county, city or town is authorized, provided funds have been made available therefor, to provide at public expense one or more community centers and services for senior citizens residing in his territory who are eligible therefor pursuant to the provisions of this title. Such centers and services may be provided only in cases where it is determined, under criteria established by the department, that there is a need therefor.

2. The furnishing of such centers and services is hereby declared to be proper municipal purpose for which the moneys of a county, city or town may be raised and expended. A county, city or town may receive and expend moneys from the state, the federal government or private

individuals, corporations or associations for furnishing such centers and services.

3. Community centers and services for senior citizens under this title may be provided by a social services official either directly or through the purchase or rental of such centers and services from a private non-profit corporation, company or association provided they are operated and furnished in compliance with regulations of the department.

§ 370-a. Federal grants. 1. The department of taxation and finance is authorized to accept and receive from the federal government any moneys which the federal government shall offer to the state for or with respect to the construction, maintenance or operation of centers for senior citizens or for or with respect to the provision of services for senior citizens, under or pursuant to any federal law heretofore or hereafter enacted authorizing grants to the state for such purpose or similar purposes, including payments to political subdivisions of, and any public agencies in the state.

2. The department of social services is hereby designated and empowered to act as the agent of the state in carrying out the provisions of any such federal law with respect to such centers and services for senior citizens in this state.

3. Any and all such grants and moneys awarded for assistance to this state under or pursuant to any federal law shall be accepted and received by the department of taxation and finance as custodian thereof and such moneys, so received, shall be deposited by such department of taxation and finance in a special fund or funds and shall be used exclusively for the purposes of any such federal law. Such moneys shall be paid from such fund or funds on the audit and warrant of the comptroller upon vouchers certified or approved by the commissioner of social services.

4. Any federal funds available to the state for such centers and services for senior citizens shall be retained by the state.

§ 370-b. State reimbursement. 1. (a) Expenditures made by counties, cities, and towns for services for senior citizens and their administration, and senior citizens center projects, pursuant to this title, shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department, as follows: There shall be paid to each county, city or town (1) the amount of federal funds, if any, properly received or to be received on account of such expenditures; (2) fifty per centum of its expenditures for services for senior citizens and their administration and senior citizens center projects, after first deducting therefrom any federal funds received or to be received on account thereof, and any expenditures defrayed by fees paid by senior citizens or by other private contributions.

(b) For the purposes of this title, expenditures for administration of services for senior citizens shall include expenditures for compensation of employees in connection with the furnishing of such services, including but not limited to costs incurred for pensions, federal old age and survivors insurance and health insurance for such employees; training programs for personnel, operation, maintenance and service costs; and such other expenditures such as equipment costs, depreciation and charges and rental values as may be approved by the department. It shall not include expenditures for capital costs. In the case of centers and services for senior citizens purchased or leased from a non-profit corporation, company or association, expenditures shall include an allocable proportion of all operating costs of such centers as may be approved by the department including but not limited to the expenditures enumerated in this paragraph (b) and expenditures for amortization, interest and other financing costs of any mortgage loan made to such non-profit corporation, company or association.

2. (a) Claims for state reimbursement shall be made in such form and manner and at such times and for such periods as the department shall determine.

(b) When certified by the department, state reimbursement shall be paid from the state treasury upon the audit and warrant of the

comptroller out of funds made available therefor.

3. The department is authorized in its discretion to approve and certify to the comptroller for payment, advances to counties, cities or towns in anticipation of the state reimbursement provided for in this section.

4. Payment of state reimbursement and advances shall be made to local fiscal officers as in the case of state reimbursement for public assistance and care under other provisions of this chapter.

TITLE 12-A

SUPPORTS AND SERVICES FOR YOUTH SUFFERING FROM ADVERSE CHILDHOOD EXPERIENCES

Section 370-c. Supports and services for youth suffering from adverse childhood experiences.

§ 370-c. Supports and services for youth suffering from adverse childhood experiences. 1. Youth suffering from or at risk of adverse childhood experiences, as defined in paragraph (c) of subdivision one of section twenty-d of this chapter, may be eligible for a range of appropriate services and supports that enhance protective factors, or are culturally competent, evidence based and trauma informed and beneficial to the overall health and well-being of the youth, including but not necessarily limited to available: (i) appropriate health and behavioral health services provided to youth who are otherwise eligible under subdivision seven of section twenty-five hundred ten of the public health law and subdivision two of section three hundred sixty-five-a of this article; (ii) preventive services provided to youth who are otherwise eligible pursuant to section four hundred nine-a of this article; (iii) services provided to youth who are otherwise eligible pursuant to subdivision two of section four hundred fifty-eight-m of this chapter; or (iv) to the extent funds are specifically appropriated therefor, any other services necessary to serve youth suffering from adverse childhood experiences.

2. The office of children and family services, in consultation with the office of temporary and disability assistance, the office of mental health, the office of addiction services and supports, the department of health and not-for-profit organizations that have expertise providing services to individuals suffering from adverse childhood experiences, shall develop or utilize existing educational materials to be used to educate parents, guardians and other authorized individuals about adverse childhood experiences including the environmental events that may impact or lead to adverse childhood experiences, the importance of protective factors and the availability of services for children at risk of or suffering from adverse childhood experiences. Such information shall be made available electronically and shall be posted on each agency's website.

* TITLE 13

STATE HEATING FUEL CRISIS ASSISTANCE

Section 370-aa. State heating fuel crisis assistance.

* NB Expired October 1, 1980

* **§ 370-aa. State heating fuel crisis assistance.** 1. The commissioner shall establish a state program to provide heating fuel related crisis assistance to households whose total income from all sources is between one hundred twenty-five percent and two hundred percent of the federal community services administration poverty guidelines and who have not received a grant for heating fuel assistance during the nineteen hundred seventy-nine--nineteen hundred eighty winter from any other emergency or energy assistance program. To the extent funds are available, such household may apply and be eligible for assistance if the household is threatened with shut-off or nondelivery of heating fuel due to nonpayment and in the case of a one person household, the household's liquid resources do not exceed one thousand five hundred dollars or in the case of households of more than one person liquid resources do not exceed two thousand two hundred fifty dollars. Liquid resources shall mean those resources which are in cash or are financial instruments

which are convertible to cash.

2. Eligible households with incomes between one hundred twenty-five percent and one hundred fifty percent of the federal community services administration poverty guidelines may receive a total benefit not to exceed two hundred dollars; eligible households with incomes between one hundred fifty per cent and one hundred seventy-five percent of the federal community services administration poverty guidelines may receive a total benefit not to exceed one hundred fifty dollars; and eligible households with incomes between one hundred seventy-five percent and two hundred percent of the federal community services administration poverty guidelines may receive a total benefit not to exceed one hundred dollars. Eligible households which pay for heat directly may receive benefits in the form of direct payment to suppliers of home heating fuels. All households may receive assistance in the form of cash up to fifty dollars for warm clothing, blankets, replacement of broken window panes, firewood, temporary shelter, emergency repairs to heating equipment, nutrition, health and other supportive services. In no event shall the sum of assistance under this program made to or on behalf of any household exceed the actual amount needed to ameliorate the heating fuel crisis.

3. a. Assistance may also be provided to households whose rent includes heat. Such assistance may be provided only in the event that the owner of the rented dwelling has abandoned responsibility for paying heating costs. Such assistance may be in the form of emergency heating fuel deliveries.

b. Such assistance shall be provided for a period not to exceed fifteen days, in order to allow time for appropriate action to be taken by city or county officials.

c. In such cases where the landlord or owner has abandoned his responsibility for paying heating costs, and where tenants or landlords can verify that at least sixty percent of the building's households are at or below two hundred percent of the federal community services administration poverty guidelines, the buildings may qualify.

d. The department shall make all reasonable efforts to recover from the landlord, emergency expenditures for heating fuel.

4. This program shall be administered at the county level and in the city of New York by the local departments of social services. Local departments shall distribute funds allocated for heating fuel crisis assistance to eligible households for the payment of heating fuel costs as described in subdivisions two and three of this section. The department shall prepare application forms for use by the local departments and instructions to be used in completing applications. Certification of eligibility and authorization of payment shall be the responsibility of the local departments. The local departments shall provide for preliminary screening and assistance to applicants by community action agencies, area offices on aging and other community agencies.

5. The department and local departments shall contract for the provision of an outreach program to inform potentially eligible households of the availability of heating fuel crisis assistance. The department shall enter into an agreement with the state office for the aging which will provide outreach to the elderly and with community action agencies and other community based agencies for outreach to other potentially eligible households. The department shall develop program materials which will be made available to utilities, fuel oil dealers and community agencies for the purpose of informing the public about the availability of crisis assistance.

6. Elderly persons over the age of sixty shall be a priority class to be served by this program. To insure the priority becomes operational, local departments shall provide directly or when appropriate through contract the following special services to the elderly: priority in scheduling appointments; arrangements for transportation when no other transportation is available; intake and certification at home or through a representative for those elderly who are homebound.

7. Payments made under this program shall not be considered as income

or resource for the purpose of determining eligibility for benefits under any income maintenance or medical assistance program.

8. The department shall be responsible for monitoring the local implementation of this program. All cases including a declaration of income shall be subject to a redetermination and verification of income eligibility. To insure that the elderly receive priority, the department shall periodically review the population certified to receive benefits and in districts where the elderly are not being served shall, with the state office for aging, take appropriate actions to ensure that the elderly are served. The department and local districts shall maintain a system of records for this program which is separate from any other emergency or energy related assistance program.

No later than July thirty-first, nineteen hundred eighty, the department shall provide the governor and legislature with a report on the state heating fuel crisis assistance program's implementation and use in each district. Such report shall include the total number of households and the number of elderly households served in each income category, the amount and type of assistance provided to each household and the activities and expenditures for all administering and outreach agencies in each district.

9. The department shall promulgate all regulations necessary for operation of the state heating fuel crisis assistance program which are consistent with the state plan for the nineteen hundred eighty community services administration energy crisis assistance program.

10. Within the amounts appropriated therefor funds will be made available to each social services district for heating fuel crisis assistance. If a county or city social services district incurs expenditures in excess of its allocated amount, the county or city as the case may be shall be liable for such expenditures. Funds will be allocated by the department according to the following formula: Five percent of the funds shall be set aside by the department to be used in meeting any unanticipated heating fuel related crisis caused by especially severe weather. All remaining funds and set aside funds which

are unexpended by April first, nineteen hundred eighty shall be allocated according to the following formula: Twenty percent of the funds shall be allocated equally to every county and the remaining eighty percent shall be allocated to the fifty-seven counties outside the city of New York and the city of New York based on the corrected product of the percentage of state's poverty population residing in each county, the average heating degree days for the county divided by the state average and the percentage of county population which is aged divided by the percentage of state population which is aged.

When thirty percent of the funds are obligated the department will review the expenditures of program funds for the elderly with a view toward increasing outreach and support services if this priority population is not being reached.

When fifty percent of the funds are obligated, the department will review the initial allocation to determine variances in utilization and make appropriate adjustments or transfers.

11. Notwithstanding the foregoing, if the commissioner determines that a federally funded program of energy crisis assistance is in effect and is duplicative in whole or part to the program provided for in this section the commissioner shall notify the local social services district in writing of such determination of duplication and the date after which state reimbursement for all or part of the expenditures made pursuant to this section shall not be authorized.

12. For purposes of this section, the term "home heating fuel" shall mean fuel oil, coal, wood, propane, natural gas, electricity, steam, kerosene and any other fuel when used for residential heating purposes.

* NB Expired October 1, 1980

ARTICLE 6

CHILDREN

Title 1. Care and protection of children (§§ 371-393).

1-A. Child care creation and expansion tax credit program

- (§§ 394--394-g).
- 2. Powers and duties of public welfare officials (§§ 395-404).
- 3. Child welfare services (§§ 406-408).
- 4. Preventive services for children and their families (§§ 409--409-a).
- 4-A. Child welfare services planning and administration (§§ 409-d--409-h).
- 4-B. Services; pregnant adolescents (§§ 409-i--409-n).
- 5. Day care for certain children (§§ 410--410-ccc).
- 5-A. Youth Facilities Improvement Act (§§ 410-d--410-o).
- 5-B. Child care resource and referral program (§§ 410-p--410-t).
- 5-C. Block grant for child care (§§ 410-u--410-z).
- 6. Child Protective Services (§§ 411-428).
- 6-A. Home visiting (§ 429).
- 7. Day Services for Children and Families (§§ 430-434).
- 8. State Child Care Review Service (§§ 440-446).
- 8-A. Safe harbour for exploited children act (§§ 447-a--447-b).
- 9. Subsidies for the Adoption of Children (§§ 450-458).
- 10. Kinship guardianship assistance program (§§ 458-a--458-f).
- 11. Education reform program (§ 458-l).
- 12. Family support services programs (§§ 458-m--458-n).
- 12-A. Differential response programs for children under twelve (§ 458-o).

TITLE 1

CARE AND PROTECTION OF CHILDREN

- Section 371. Definitions.
 - 371-a. Procedure.
 - 371-b. Citizen review panels.
- 372. Records and reports.
 - 372-b. Adoption services.
 - 372-c. Putative father registry.
 - 372-d. Adoption services; purchase by department.
 - 372-e. Adoption applications; appeals.
 - 372-f. Statewide adoption service.
 - 372-g. Abandoned infant protection program.

- 372-h. Reporting on post adoption services.
- 373. Religious faith.
- 373-a. Medical histories.
- 374. Authority to place out or board out children.
- 374-a. Interstate compact on the placement of children.
- 374-b. Authority to operate agency boarding home.
- 374-c. Authority to operate group homes.
- 374-d. Authority to operate public institutions for children.
- 374-e. Authority to place out or board out children with therapeutic foster parents.
- 374-f. Authority to enter into leases for dwelling units.
- 375. Requirement of certificate or license to board children.
- 376. Certificate to board children and/or minors under age of eighteen years.
- 377. License to board children.
- 378. Form, duration and limitation of certificates and licenses.
- 378-a. Access to conviction records by authorized agencies.
- 379. Revocation of certificates and licenses.
- 380. Boarding and free homes; records.
- 381. Maternity homes; records and reports.
- 382. Responsibility for children without state residence; license and board.
- 383. Care and custody of children.
- 383-a. Immunity from liability for application of the reasonable and prudent parent standard.
- 383-b. Medical treatment for abused, neglected and destitute children; consent of commissioners.
- 383-c. Guardianship and custody of children in foster care.
- 384. Guardianship and custody of children not in foster care.
- 384-a. Transfer of care and custody of children.
- 384-b. Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights.
- 384-c. Notice in certain proceedings to fathers of children

- born out-of-wedlock.
- 385. Orders; prohibiting placing out or boarding out; removal.
- 386. Visitation; inspection and supervision.
- 387. Ineligibility for public foster care funds; fiscal penalties.
- 388. Special charters.
- 389. Penalty for violations.
- 390. Child day care; license or registration required.
- 390-a. Standards and training for child day care.
- 390-b. Criminal history review and background clearances of child care providers, generally.
- 390-c. Notice of pesticide applications.
- 390-c*2. Additional powers and duties of the office of children and family services.
- 390-d. Requiring barriers to be placed around swimming pools and bodies of water on the grounds of family day care homes or group family day care homes.
- 390-e. Criminal history review; mentoring programs.
- 390-f. Report on child care insurance.
- 390-g. Pesticide alternatives.
- 390-h. Notice requirement before closing certain day care centers.
- 390-i. Notice of inspection report.
- 390-j. Performance summary card in a city having a population of one million or more.
- 390-l. Securing of furniture.
- 390-m. Window coverings.
- 390-n. Child care support center; operating certificate required.
- 390-o. Prohibit the use of infant walkers in child care facilities.
- 391. Violation; injunction.
- 392. Services for relative caregivers.
- 393. Court review of placement in a qualified residential treatment program.
- 393*2. Consideration of blindness during guardianship, custody

or adoption proceedings.

§ 371. Definitions

Unless the context or the subject matter manifestly requires a different interpretation, when used in this article or in any special act relating to children,

1. "Child" means a person actually or apparently under the age of eighteen years;

2. "Abandoned child" means a child under the age of eighteen years who is abandoned by both parents, or by the parent having its custody, or by any other person or persons lawfully charged with its care or custody, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b;

3. "Destitute child" means:

(a) a child under the age of eighteen who is in a state of want or suffering due to lack of sufficient food, clothing, shelter, or medical or surgical care; and:

(i) does not fit within the definition of an "abused child" or a "neglected child" as such terms are defined in section one thousand twelve of the family court act; and

(ii) is without any parent or caretaker as such term is defined in section one thousand ninety-two of the family court act, available to sufficiently care for him or her, due to:

(A) the death of a parent or caretaker; or

(B) the incapacity or debilitation of a parent or caretaker, where such incapacity or debilitation would prevent such parent or caretaker from being able to knowingly and voluntarily enter into a written agreement to transfer the care and custody of said child pursuant to section three hundred fifty-eight-a or three hundred eighty-four-a of the social services law; or

(C) the inability of the local social services district to locate any parent or caretaker, after making reasonable efforts to do so; or

(D) the parent or caretaker being physically located outside of the state of New York and the local social services district is or has been unable to return said child to such parent or caretaker while or after making reasonable efforts to do so, unless the lack of such efforts is or was appropriate under the circumstances;

(b) a child who is under the age of eighteen years and absent from his or her legal residence without the consent of his or her parent, legal guardian or custodian; or

(c) a child under the age of eighteen who is without a place of shelter where supervision and care are available who is not otherwise covered under paragraph (a) of this subdivision; or

(d) a person who is a former foster care youth under the age of twenty-one who was previously placed in the care and custody or custody and guardianship of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, and who was discharged from foster care due to a failure to consent to continuation in placement, who has returned to foster care pursuant to section one thousand ninety-one of the family court act.

4-a. "Neglected child" means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not

establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned by his parents or other person legally responsible for his care.

4-b. "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed, an act of sexual abuse against such child as defined in the penal law.

5. "Juvenile delinquent" means a person as defined in section 301.2 of the family court act.

6. "Person in need of supervision" means a person as defined in section seven hundred twelve of the family court act.

7. "Dependent child" means a child who is in the custody of, or wholly or partly maintained by an authorized agency or an institution, society or other organization of charitable, eleemosynary, correctional, or reformatory character;

8. "Mentally disabled child" means a child who has a mental disability as defined in section 1.03 of the mental hygiene law;

9. "Physically handicapped child" means a child who, by reason of a

physical disability or infirmity, whether congenital or acquired by accident, injury or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation, as provided in the education law, or is or may be expected to be handicapped, as provided in the public health law;

10. "Authorized agency" means

(a) Any agency, association, corporation, institution, society or other organization which is incorporated or organized under the laws of this state with corporate power or empowered by law to care for, to place out or to board out children, which actually has its place of business or plant in this state and which is approved, visited, inspected and supervised by the office of children and family services or which shall submit and consent to the approval, visitation, inspection and supervision of such office as to any and all acts in relation to the welfare of children performed or to be performed under this title; provided, however, that on and after June first, two thousand seven, such term shall not include any for-profit corporation or other for-profit entity or organization for the purposes of the operation, management, supervision or ownership of agency boarding homes, group homes, homes including family boarding homes of family free homes, or institutions which are located within this state;

(b) Any court or any social services official of this state authorized by law to place out or to board out children or any Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter;

(c) Any agency, association, corporation, institution, society or other organization which is not incorporated or organized under the laws of this state, placing out a child for adoption whose admission to the United States as an eligible orphan with non-quota immigrant status pursuant to the federal immigration and nationality act is sought for the purpose of adoption in the State of New York or who has been brought into the United States with such status and for such purpose, provided, however, that such agency, association, corporation, institution, society or other organization is licensed or otherwise authorized by another state to place out children for adoption, that such agency, association, corporation, institution, society or other organization is

approved by the department to place out such children with non-quota immigrant status for adoption in the State of New York, and provided further, that such agency, association, corporation, institution, society or other organization complies with the regulations of the department pertaining to such placements. Notwithstanding any other provision of law to the contrary, such agency shall be limited in its functioning as an authorized agency to the placing out and adoption of such children. This paragraph shall not require the department to approve any such agency, association, corporation, institution, society or other organization which is located in a state which is a party to the interstate compact on the placement of children.

11. "Custody" means custody in pursuance of or in compliance with expressed provisions of law;

12. "Place out" means to arrange for the free care of a child in a family other than that of the child's parent, step-parent, grandparent, brother, sister, uncle, or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care;

13. "Place" or "commit" includes replace and recommit;

14. "Board out" means to arrange for the care of a child in a family, other than that of the child's parent, step-parent or legal guardian, to whom payment is made or agreed to be made for care and maintenance.

15. "Home" includes a family boarding home or a family free home.

16. agency boarding home shall mean a family-type home for children and/or for minors operated by an authorized agency, in quarters or premises owned, leased or otherwise under the control of such agency, for the purpose of providing care and maintenance therein for children or minors under the care of such agency.

17. "Group home" shall mean a facility for the care and maintenance of not less than seven, nor more than twelve children, who are at least five years of age, operated by an authorized agency except that such

minimum age shall not be applicable to siblings placed in the same facility nor to children whose mother is placed in the same facility.

18. "Public institution for children" shall mean an institution which is established and maintained by a public welfare district for the purpose of providing care and maintenance therein for children and minors for whose care such district is responsible and who require care away from their own homes.

19. "Foster parent" shall mean any person with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long-term care, and "foster child" shall mean any person, in the care, custody or guardianship of an authorized agency, who is placed for temporary or long-term care.

20. "Therapeutic foster parent" means a foster parent who is certified or licensed pursuant to section three hundred seventy-five or section three hundred seventy-six of this article, or otherwise approved and who has successfully completed a training program developed by professionals experienced in treating children who exhibit high levels of disturbed behavior, emotional disturbance or physical or health needs. For any such child placed in their care, such parent shall assist in the implementation of the therapeutic treatment portion of the family service plan required by section four hundred nine-e of this article.

21. "Supervised independent living program" shall mean one or more of a type of agency boarding home operated and certified by an authorized agency in accordance with the regulations of the office of children and family services to provide a transitional experience for older youth who, based upon their circumstances, are appropriate for transition to the level of care and supervision provided in the program. Each supervised independent living unit shall be located in the community separate from any of the agency's other congregate dwellings.

* 22. "Supervised setting" shall mean a residential placement in the community approved and supervised by an authorized agency or the local social services district in accordance with the regulations of the office of children and family services to provide a transitional

experience for older youth in which such youth may live independently. A supervised setting includes, but is not limited to, placement in a supervised independent living program, as defined in subdivision twenty-one of this section.

* NB There are 2 sb 22's

* 22. "Kinship caregiver" means a relative or non-relative who is acting as a parent and who:

(a) is related to the child through blood, marriage or adoption;

(b) is related to a half-sibling of the child through blood, marriage or adoption; or

(c) is an adult with a positive prior relationship with the child, a half-sibling of the child or the child's parent, including, but not limited to, a step-parent, godparent, neighbor or family friend.

* NB There are 2 sb 22's

§ 371-a. Procedure. In any proceeding commenced pursuant to this chapter in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of the social services law.

§ 371-b. Citizen review panels. 1. There shall be established at least three citizen review panels. At least one panel shall be established for the city of New York and at least two panels shall be established for social services districts or combinations of districts outside of the city of New York. The panel in the city of New York shall create one subcommittee for each borough for the purposes of evaluating the extent to which the state and the social services district are discharging their child protection responsibilities within that particular borough, in accordance with subsection three of this section. The office of children and family services shall make available resources to support the needs of each citizen review panel.

2. Each citizen review panel shall consist of thirteen members, seven of whom shall be appointed by the governor, three of whom shall be

appointed by the temporary president of the senate, and three of whom shall be appointed by the speaker of the assembly. Each panel shall duly elect a chairperson of such panel. Each panel shall be composed of volunteer members who are broadly representative of the community in which such panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect. No person employed by federal, state, county or municipal agencies which directly deliver child welfare services may be appointed to a panel.

3. Each citizen review panel shall, by examining the policies and procedures of the state and social services districts and, where appropriate, specific cases, evaluate the extent to which the agencies are effectively discharging their child protection responsibilities in accordance with: (a) the state plan established pursuant to 42 U.S.C. § 5106a(b); (b) the child protection standards set forth in 42 U.S.C. § 5106a(b); and (c) any other criteria that the panel considers important to ensure the protection of children. Each panel shall meet not less than once every three months. Each panel may hold public hearings on issues within the panel's jurisdiction.

4. Each citizen review panel shall have access to information on specific cases in accordance with paragraph (A) of subdivision four of section four hundred twenty-two of this chapter. Each panel shall also have reasonable access to public and private facilities which are in receipt of public funds and are providing child welfare services within the panel's jurisdiction. Where necessary, the office shall assist a panel in obtaining access to information or facilities as authorized in accordance with this section. Each panel shall also have access to the report prepared by the state pursuant to 42 U.S.C. § 5106a(d).

5. Each citizen review panel shall prepare and make available to the public, on an annual basis, a report containing: (a) a summary of the activities of the panel; and (b) the findings and recommendations of the panel. Each report shall be submitted by February first and shall omit all confidential information used to prepare the report.

6. The members of each citizen review panel shall not disclose to any

person or government official any identifying information about any specific child protection case. A member who knowingly violates this duty of confidentiality may be subject to a civil penalty not to exceed one thousand dollars and removal from the panel.

7. The legal defense of a member of a citizen review panel shall be governed by the terms of section seventeen of the public officers law.

§ 372. Records and reports. 1. Every court, and every public board, commission, institution, or officer having powers or charged with duties in relation to abandoned, delinquent, destitute, neglected or dependent children who shall receive, accept or commit any child shall provide and keep a record showing:

(a) the full and true name of the child;

(b) the child's sex and date and place of birth, if ascertainable, or the child's apparent age;

(c) the full and true names and places of birth of the child's parents, and such parents' actual residence if living, or such parents' latest known residence, if deceased or whereabouts unknown and the name and actual residence of any other person having custody of the child, as nearly as the same can reasonably be ascertained;

(d) the religious faith of the parents and of the child;

(e) the name and address of any person, agency, institution or other organization to which the child is committed, placed out, boarded out, or otherwise given into care, custody or control;

(f) the religious faith and occupation of the head or heads of the family with whom the child is placed out or boarded out and their relationship, if any, to the child;

(g) if any such child shall die, the date and cause of death and place of burial;

(h) any further disposition or change in care, custody or control of the child;

(i) the date or dates of reception and of any subsequent disposition or change in care, custody or control and, in case of adoption, the name and title of the judge or surrogate making the order of adoption, the date of such order and the date and place of filing of such order;

(j) the reasons for any act performed in reference to such child herein required to be recorded, together with such further information as the department may require; and shall make to the department upon blanks provided by the department reports of each such child placed out, or boarded out, containing the information herein required to be kept; and shall furnish such information to any authorized agency to which any such child shall be committed or otherwise given into custody; and

(k) if any such child shall have a developmental disability as defined pursuant to subdivision twenty-two of section 1.03 of the mental hygiene law, and, if so, the type of such developmental disability.

2. Every charitable, eleemosynary, reformatory, or correctional institution, public or private, incorporated or unincorporated, and every agency, association, corporation, institution, society or other organization which shall receive, accept, or admit any child whether or not in receipt of payments from public funds for the support of such child shall provide and keep a record as described in subdivision one, and also showing how, by whom and for what reason such child shall have been given into its custody or committed to it and shall make reports of each such child to the department upon blanks provided by the department giving all the information required by subdivision one to be recorded together with such further information as the department may require. Except as to children placed out, boarded out or surrendered or for whom guardianship is accepted or adoption provided, the requirement of this section shall not apply to hospitals, day nurseries, eleemosynary day schools, and summer and vacation homes and camps, or to institutions for the care of convalescent, anaemic, under-nourished or cardiac children, preventoria, working boys' homes, emergency shelters and schools for the blind and for the deaf, but all such hospitals, homes and institutions shall keep such records and make to the department such reports as the department may require.

3. Such records maintained by the department or an authorized agency, including a local social services district, regarding such children are confidential, provided, however, that such records are subject to the provisions of article thirty-one of the civil practice law and rules. When either the subject foster child, or such child's parent, or such

child's guardian if any, is not a party to the action, a copy of the notice or motion for discovery shall be served upon such parent, guardian, and child and, if the child is still a minor, the child's attorney. Such persons may thereafter appear in the action with regard to such discovery. Where no action is pending, upon application by a parent, relative or legal guardian of such child or by an authorized agency, after due notice to the institution or authorized agency affected and hearing had thereon, the supreme court may by order direct the officers of such institution or authorized agency to furnish to such parent, relative, legal guardian or authorized agency such extracts from the record relating to such child as the court may deem proper. The department through its authorized agents and employees may examine at all reasonable times the records required by this section to be kept.

4. (a) All such records relating to such children shall be open to the inspection of the board and the department at any reasonable time, and the information called for under this section and such other data as may be required by the department shall be reported to the department, in accordance with the regulations of the department. Such records kept by the department shall be deemed confidential and shall be safeguarded from coming to the knowledge of and from inspection or examination by any person other than one authorized, by the department, by a judge of the court of claims when such records are required for the trial of a claim or other proceeding in such court or by a justice of the supreme court, or by a judge of the family court when such records are required for the trial of a proceeding in such court, after a notice to all interested persons and a hearing, to receive such knowledge or to make such inspection or examination. No person shall divulge the information thus obtained without authorization so to do by the department, or by such judge or justice.

(b)(i) Notwithstanding any inconsistent provision of law to the contrary, records relating to children kept pursuant to this section shall be made available to officers and employees of the state comptroller or of the city comptroller of the city of New York, or of the county officer designated by law or charter to perform the auditing function in any county not wholly contained within a city, for the purposes of a duly authorized performance audit, provided that such

comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit, that such persons shall not use such information in any way except for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information obtained in the conduct of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written approval.

(ii) Any failure to maintain the confidentiality of client-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the department. The department shall establish the grounds for denial of access to records contained under this section and shall recommend, as necessary, a plan of remediation to the audit agency. Except as provided in this section, nothing in this paragraph shall be construed as limiting the powers of such comptroller or officer to access records which he is otherwise authorized to audit or obtain under any other applicable provision of law. Any person given access to information pursuant to this paragraph who releases data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor.

4-a. Notwithstanding any provisions of law to the contrary, social services districts shall provide a written summary of services rendered to a child upon the request of a probation service conducting an investigation pursuant to the provisions of section 351.1 of the family court act. Information provided to a probation service pursuant to the provisions of this subdivision shall be maintained by such service

according to the provisions of subdivision five of section 351.1 of the family court act.

4-b. Notwithstanding any other provision of law, foster care information governed by this section may be released by the department or an authorized agency to a person, agency or organization for purposes of a bona fide research project. Identifying information shall not be made available, however, unless it is absolutely essential to the research purpose and the department gives prior approval. Information released pursuant to this subdivision shall not be re-disclosed except as otherwise permitted by law and upon the approval of the department.

5. The requirements of this section to keep records and make reports shall not apply to the birth parent or parents, or relatives within the second degree of such parents.

6. The provisions of this section as to records and reports to the department shall apply also to the placing out, adoption or boarding out of a child and the acceptance of guardianship or of surrender of a child.

7. An authorized agency as defined in paragraphs (a) and (b) of subdivision ten of section three hundred seventy-one of this chapter or any primary or secondary school or an office of the division for youth, except agencies operating pursuant to article nineteen-H of the executive law, who shall receive, accept, enroll or commit any child under such circumstances as shall reasonably indicate that such child may be a missing person shall make inquiries of each such child to the division of criminal justice services in a manner prescribed by such division; provided that as used in this subdivision a court shall not be included within the definition of an authorized agency. If such child appears to match a child registered with the statewide central register for missing children as described in section eight hundred thirty-seven-e of the executive law, or one registered with the national crime information center register, such agency shall immediately contact the local law enforcement agency.

8. In any case where a child is to be placed with or discharged to a relative or other person legally responsible pursuant to section ten hundred seventeen or ten hundred fifty-five of the family court act, such relative or other person shall be provided with such information by an authorized agency as is provided to foster parents pursuant to this section and applicable regulations of the department.

§ 372-b. Adoption services. 1. a. A prospective adoptive parent shall have a right to a fair hearing pursuant to section twenty-two of this chapter concerning the failure of a social services official to provide adoption services authorized to be provided pursuant to this section and the state's consolidated services plan. At the time a child is placed in a prospective adoptive home, the prospective adoptive parent shall be notified in writing of his or her right to such fair hearing.

b. Each social services official shall provide, either directly or through purchase of service, adoption services for each child in their care who is freed for adoption. Such adoption services shall include the evaluation of a child's placement needs and pre-placement planning, recruitment of and homestudy for prospective adoptive parents, training of adoptive parents, placement planning, supervision and post adoption services.

2. The department shall promulgate regulations which shall require that adoption services be made available to all children who are listed with the New York state adoption service. Such regulations shall also provide for cooperation between local social services commissioners, and for apportioning reimbursement for adoption services where more than one agency or social services district has provided such services for a child.

2-a. The department shall promulgate regulations requiring all adoption agencies to forward names and addresses of all persons who have applied for adoption of a hard-to-place or handicapped child, as defined in section four hundred fifty-one of this chapter. A list of such names and addresses shall be maintained by the department and made available,

without charge, to every agency in the state to assist them in placing such children for adoption.

3. The department shall promulgate regulations to maintain enlightened adoption policies and to establish standards and criteria for adoption practices.

§ 372-c. Putative father registry. 1. The department shall establish a putative father registry which shall record the names and addresses of: (a) any person adjudicated by a court of this state to be the parent of a child born out of wedlock; (b) any person who has filed with the registry before or after the birth of a child out of wedlock, a notice of intent to claim parentage of the child; (c) any person adjudicated by a court of another state or territory of the United States to be the father of an out of wedlock child, where a certified copy of the court order has been filed with the registry by such person or any other person; (d) any person who has filed with the registry an instrument acknowledging paternity pursuant to section 4-1.2 of the estates, powers and trusts law.

2. A person filing a notice of intent to claim parentage of a child or an acknowledgement of paternity shall include therein his current address and shall notify the registry of any change of address pursuant to procedures prescribed by regulations of the department.

3. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed therewith and, upon receipt of such notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

4. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.

5. The department shall, upon request, provide the names and addresses

of persons listed with the registry to any court or authorized agency, and such information shall not be divulged to any other person, except upon order of a court for good cause shown.

§ 372-d. Adoption services; purchase by department. 1. The department may provide, through purchase of services from authorized agencies, adoption services for any child who has been referred to the statewide adoption service pursuant to section three hundred seventy-two-c and who has not been placed for adoption within three months after the date of such referral.

2. As used in this section "adoption services" shall mean those services and activities set forth in subdivision one of section three hundred seventy-two-b of this chapter.

3. In accordance with regulations of the department, expenditures made by the department for the provision, through purchase, of adoption services for a child pursuant to this section shall be subject to reimbursement to the state by the social services district charged with the guardianship and custody of the child, as follows: fifty percent of the amount expended for the provision of such adoption services after first deducting from such amount any federal funds properly received or to be received on account thereof.

§ 372-e. Adoption applications; appeals. 1. An authorized agency shall keep a record of applications received from persons seeking to become adoptive parents, including all actions taken on such applications.

2. The department shall promulgate regulations setting forth standards and procedures to be followed by authorized agencies in evaluating persons who have applied to such agencies for the adoption of a child. Such regulations shall also restrict the evaluation process so as not to unnecessarily duplicate previous investigations which may have been made of the adoptive applicant in the context of a prior adoption application or an application for licensure or certification to board

children.

3. (a) Upon an authorized agency's denial of an application, the authorized agency shall furnish the applicant with a written statement setting forth its reason for the denial of the application. Such written statement shall include a notice to the applicant, in bold face type, of such applicant's right to request and be granted a hearing in accordance with the provisions of subdivision four of this section.

(b) Upon an authorized agency's failure to act on an application within six months of its submission, the authorized agency shall, on such applicant's request, furnish the applicant with a written statement setting forth its reason for its failure to act on the application. Such written statement shall include a notice to the applicant, in bold face type, of such applicant's right to request and be granted a hearing in accordance with the provisions of subdivision four of this section.

4. Any person whose application has been denied or whose application has not been acted upon by an authorized agency within six months of its submission may request and shall be granted a hearing in accordance with the provisions of section twenty-two of this chapter relating to fair hearings.

§ 372-f. Statewide adoption service. 1. There shall be established by the department either directly or through purchase a statewide adoption service which shall serve all authorized agencies in the state as a means of recruiting adoptive families for children who have been legally freed for adoption but have remained in foster care for a period of three months or more. Such period in foster care shall include any period of foster care immediately preceding the date on which the child was legally freed for adoption. The service shall provide descriptions and photographs of such children, and shall also provide any other information deemed useful in the recruitment of adoptive families for each such child. The service shall be updated monthly.

2. The service may be organized on a regional basis, but shall be provided to all authorized child caring agencies and in accordance with

the regulations of the department, to all appropriate citizen groups and other organizations and associations interested in children's services.

3. The department shall promulgate regulations governing the operations of the adoption service.

4. (a) Except as set forth in paragraph (b) of this subdivision, each authorized agency shall refer to the adoption service, accompanied by a photograph and description, as shall be required by departmental regulations, each child in its care who has been legally freed for adoption and who has been in foster care for the period specified in subdivision one of this section and for whom no adoptive home has been found. If the child is fourteen years or older and will not consent to his or her adoption, such child need not be listed on the service. Such children's names shall be forwarded to the department by the authorized agency, with reference to the specific reason by which the child was not placed on the service. The department shall establish procedures for periodic review of the status of such children. If the department determines that adoption would be appropriate for a child not listed with the service, the agency shall forthwith list the child. Each authorized agency may voluntarily refer any child who has been legally freed for adoption. In addition, upon referral of a child by an authorized agency, the department may determine that the listing of a child with the service is not in the child's best interest where: the child has been placed with a relative within the third degree of consanguinity of the parents of the child and the child does not have a permanency goal of adoption, or the child is not emotionally prepared for an adoptive placement. Any child who is not listed based on one of these factors and who is not placed in an adoptive placement within six months of referral to the department must be listed with the service at the end of the six month period in accordance with regulations of the department except where the child is placed with a relative within the third degree of consanguinity of the parents of the child, in which case the department may determine that the listing continues to be contrary to the child's best interests. The department shall establish procedures for the periodic review of the status of such children.

(b) An authorized agency shall not refer to the adoption service a

child in its care who has been legally freed for adoption when the child has been placed with a foster parent who has expressed, in writing, an interest in adopting the child; provided, however, that such child shall be referred to the adoption service in accordance with paragraph (a) of this subdivision where the foster parent has withdrawn interest in adopting the child or has been disapproved as an adoptive resource for the child. An authorized agency shall not refer to the adoption service a child in its care who has been legally freed for adoption where the agency has identified two or more potential placements for the child; provided, however, that such child shall be referred to the adoption service in accordance with paragraph (a) of this subdivision when such child has not been placed into an adoptive home within nine months of having been freed for adoption.

§ 372-g. Abandoned infant protection program. The office of children and family services shall develop and implement a public information program to inform the general public of the provisions of the abandoned infant protection act. The program may include but not be limited to the following elements:

1. educational and informational materials in print, audio, video, electronic, or other media;
2. public service announcements and advertisements; and
3. establishment of toll-free telephone hotlines to provide information.

§ 372-h. Reporting on post adoption services. 1. The office of children and family services shall place information on its website in English, French, Polish, and the ten most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on United States census data regarding post adoption services funded by the office. The office shall work with social services districts to place information, to the extent that it is

available, on each social services district website in English, French, Polish, and the ten most common non-English languages spoken by individuals with limited English proficiency in the state of New York, based on United States census data regarding post adoption services funded by the social services district. Authorized agencies shall notify a foster parent, who has expressed interest in adopting a foster child, of such websites listing potentially eligible services for a foster child, upon the adoption of such foster child.

2. The office of children and family services shall collect and compile, by social services district:

(a) the following information on post adoption services funded by the office:

(i) the number of children and families served; and

(ii) the type of services provided; and

(b) the number of families receiving preventive services where post adoption services was identified as a necessary and appropriate service as part of the family assessment service plan held pursuant to section four hundred nine-e of this article and the status of such services.

3. The office of children and family services shall compile, to the extent that such information is available electronically through the state automated child welfare information system, the following non-identifying information by social services district:

(a) the number of children entering foster care that had previously been adopted;

(b) the number of families receiving preventive services where at least one child in the household had previously been adopted; and

(c) for the children and families identified in paragraphs (a) and (b) of this subdivision, the types of services, including post adoption services, identified as necessary and appropriate for the child or the members of the child's family as part of the family assessment service plan held pursuant to section four hundred nine-e of this article and the status of such services.

4. (a) The office of children and family services shall submit, and publish on its website, an annual report to the speaker of the assembly,

the temporary president of the senate and the chairpersons of the senate and assembly children and families committees starting no later than September first, two thousand fifteen. Such report shall include data and information required by subdivision two of this section for the preceding year, to the extent that such information is available, and any other information the office of children and family services deems appropriate. The office of children and family services shall indicate the extent to which the information collected reflects the total population described in subdivision two of this section, and identify any impediments to collecting such information.

(b) Beginning September first, two thousand seventeen, the annual report required by paragraph (a) of this subdivision shall be expanded to include data and information required by subdivision three of this section for the preceding year, to the extent that such information is available, and any other information the office of children and family services deems appropriate.

§ 373. Religious faith. 1. Whenever a child is committed to any agency, association, corporation, institution or society, other than an institution supported and controlled by the state or a subdivision thereof, such commitment shall be made, when practicable, to an authorized agency under the control of persons of the same religious faith as that of the child.

2. Whenever any child is surrendered, released, placed out, or boarded out, in a family, a home or an institution, or in an agency boarding home, or in a group home, or to an authorized agency, or in the custody of any person other than that of a relative within the second degree, such surrender, release, placement or boarding out shall when practicable, be to, with or in the custody of a person or persons of the same religious faith as that of the child or to an authorized agency under the control of persons of the same religious faith as that of the child.

3. In appointing guardians of children, and in granting orders of adoption of children, the court shall, when practicable, appoint as such

guardians, and give custody through adoption, only to a person or persons of the same religious faith as that of the child.

4. The provisions of subdivision one, two and three of this section shall be so interpreted as to assure that in the care, protection, adoption, guardianship, discipline and control of any child, its religious faith shall be preserved and protected.

5. Whenever a child is placed out or boarded out in the custody, or under the supervision or control, of a person or of persons of a religious faith different from that of the child, or if a guardian of a child is appointed whose religious faith is different from that of the child, or if letters of adoption of a child are granted to a person or persons whose religious faith is different from that of the child or if a child is committed to an agency, association, corporation, society or institution, which is under the control of persons of a religious faith different from that of the child, the court, public board, commission or official shall state or recite the facts which impelled such disposition to be made contrary to the religious faith of the child or to any person whose religious faith is different from that of the child and such statement shall be a part of the minutes of the proceeding, and subject to inspection by the department or an authorized agency. This subdivision shall not apply to institutions supported and controlled by the state or a subdivision thereof.

6. The provisions of this section in relation to the protection of the religious faith of children shall also apply to minors between sixteen and eighteen years of age.

7. The provisions of subdivisions one, two, three, four, five and six of this section shall, so far as consistent with the best interests of the child, and where practicable, be applied so as to give effect to the religious wishes of the birth mother, and of the birth father whose consent would be required for the child's adoption pursuant to section one hundred eleven of the domestic relations law, if the child is born out-of-wedlock, or if born in-wedlock, the religious wishes of the birth parents of the child, or if only one of the birth parents of an

in-wedlock child is then living, the religious wishes of the birth parent then living. Religious wishes of a parent shall include wishes that the child be placed in the same religion as the birth parent or in a different religion from the birth parent or with indifference to religion or with religion a subordinate consideration. Expressed religious wishes of a birth parent shall mean those which have been set forth in a writing signed by the birth parent, except that, in a non-agency adoption, such writing shall be an affidavit of the birth parent. In the absence of expressed religious wishes, as defined in this subdivision, determination of the religious wishes, if any, of the birth parent, shall be made upon the other facts of the particular case, and, if there is no evidence to the contrary, it shall be presumed that the birth parent wishes the child to be reared in the religion of the birth parent.

§ 373-a. Medical histories. Notwithstanding any other provision of law to the contrary, to the extent they are available, the medical histories of a child legally freed for adoption or of a child to be placed in foster care and of his or her birth parents, with information identifying such birth parents eliminated, shall be provided by an authorized agency to such child's prospective adoptive parent or foster parent and upon request to the adoptive parent or foster parent when such child has been adopted or placed in foster care. To the extent they are available, the medical histories of a child in foster care and of his or her birth parents shall be provided by an authorized agency to such child when discharged to his or her own care and upon request to any adopted former foster child; provided, however, medical histories of birth parents shall be provided to an adoptee with information identifying such birth parents eliminated. Such medical histories shall include all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during pregnancy by the child's birth mother and any other information, including any psychological information in the case of a child legally freed for adoption or when such child has been adopted, or in the case of a child to be placed in foster care or placed in foster care which may be a factor influencing the child's present or future health. The

department shall promulgate and may alter or amend regulations governing the release of medical histories pursuant to this section.

§ 374. Authority to place out or board out children. 1. An authorized agency is hereby empowered and permitted to place out and board out children.

1-a. In any agreement between an authorized agency and foster parents with whom a child or children are to be placed or boarded, there shall be contained therein the following language: "It is duly acknowledged by the parties hereto that pursuant to the law of the state of New York, a foster parent shall have preference in any proceedings to adopt the child subject to this agreement upon such child having been in the custody of such foster parent for a period in excess of twelve months".

2. No person, agency, association, corporation, institution, society or other organization except an authorized agency shall place out or board out any child but the provisions of this section shall not restrict or limit the right of a parent, legal guardian or relative within the second degree to place out or board out a child.

3. Except as hereinafter provided no court, public board, commission or official shall place out or board out a child in a family not residing within this state.

(a) A commissioner of public welfare or a city public welfare officer authorized, pursuant to the provisions of section three hundred ninety-eight of the social welfare law, to accept the surrender of a child, may place out a child for the purpose of adoption in a family not residing within this state. No placement of a child in a family not residing within this state shall be made unless an agreement for such placement shall have been reached between the public welfare official making such placement and the appropriate welfare or other public official on a state or local level in the state where the family resides who is authorized by law to supervise children in institutional or foster care homes. Such agreement shall include provision for the supervision of the family and the child during the period preceding a

final adoption.

(b) A commissioner of public welfare or a city public welfare officer authorized, pursuant to the provisions of section three hundred ninety-eight of the social welfare law, to place children in family homes, may board out a child in a family not residing within this state. No child may be boarded out in a family not residing within this state unless an agreement for such placement shall have been reached between the public welfare official making such placement and the appropriate welfare or other public official on a state or local level in the state where the family resides who is authorized by law to supervise children in institutional or foster care homes. Such agreement shall include provision for the supervision of the family and the child during the period while the child is boarded out.

4. (a) No hospital or lying-in asylum whether incorporated or unincorporated where women or girls may be received, cared for or treated during pregnancy or during or after delivery except as hereinafter provided and no person licensed to carry on like work under the provisions of article twenty-eight of the public health law shall be an authorized agency for placing out or boarding out children or place out any child in a foster home whether for adoption or otherwise either directly or indirectly or as agent or representative of the mother or parents of such child.

(b) Every such hospital and licensed person shall forthwith report to the county or city officer or board charged by law with the care of destitute children away from their homes where such hospital is located or where such child is cared for by such licensed person any child abandoned or left in the care or custody of such hospital or licensed person provided, however, that no such report except as provided in section three hundred seventy-two shall be required to be made by a hospital which is also an authorized agency.

(c) Such officer or board shall receive and care for such child as a destitute or abandoned child and may bring the case of such child before the family court in the county or city for adjudication.

(d) The expense of caring for such child as a public charge shall be paid as provided by this chapter.

5. Nothing contained in this section shall deprive any hospital of any right or power conferred upon it by its charter or act of incorporation or specified in its certificate of incorporation.

6. (a) An authorized agency, as defined in paragraphs (a) and (c) of subdivision ten of section three hundred seventy-one of this title, may charge or accept a fee or other compensation to or from a person or persons with whom it has placed out a child, for the reasonable and necessary expenses of such placement; and no agency, association, corporation, institution, society or organization, except such an authorized agency, and no person may or shall request, accept or receive any compensation or thing of value, directly or indirectly, in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption; and no person may or shall pay or give to any person or to any agency, association, corporation, institution, society or organization, except such an authorized agency, any compensation or thing of value in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption. The prohibition set forth in this section applies to any adoptive placement activity involving a child born in New York state or brought into this state or involving a New York resident seeking to bring a child into New York state for the purpose of adoption.

(b) This subdivision shall not be construed to prevent the payment of salaries or other compensation by an authorized agency to the officers or employees thereof; nor shall it be construed to prevent the payment by a person with whom a child has been placed out of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child or of other necessary expenses incurred by the birth mother in connection with or as a result of such birth mother's pregnancy or the birth of the child, or of reasonable and actual nursing, medical or hospital fees for the care of such child, if such payment is made to the physician, nurse or hospital who or which rendered the services or to the birth mother of the child, or to prevent the receipt of such payment by such physician, nurse, hospital or birth

mother. This subdivision shall not be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of the birth mother's reasonable and actual expenses for housing, maternity clothing, clothing for the child and transportation for a reasonable period not to exceed one hundred eighty days prior to the birth and the later of forty-five days after the birth or forty-five days after the parental consent to the adoption, unless a court determines, in writing, that circumstances exist which require the payment of the birth mother's expenses beyond the time periods stated in this sentence. This subdivision shall not be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of reasonable and actual legal fees charged for consultation and legal advice, preparation of papers and representation and other legal services rendered in connection with an adoption proceeding or of necessary disbursements incurred for or in an adoption proceeding. No attorney or law firm shall serve as the attorney for, or provide any legal services to both the birth parent and adoptive parent in regard to the placing out of a child for adoption or in an adoption proceeding. No attorney or law firm shall serve as the attorney for, or provide any legal services to, both an authorized agency and adoptive parent or both an authorized agency and birth parent where the authorized agency provides adoption services to such birth parent or adoptive parent, where the authorized agency provides foster care for the child, or where the authorized agency is directly or indirectly involved in the placing out of such child for adoption.

7. After receipt of notice from the state commissioner of health or the department of health of the city of New York, as the case may be, that an application has been received by such commissioner or department for a license or for the renewal of a license to conduct a maternity hospital or lying-in asylum, pursuant to the provisions of article twenty-eight of the public health law, the department shall, after notice to the applicant and opportunity for him to be heard, certify in writing to such commissioner or city department that the department has reasonable cause to believe that the applicant is violating or has violated the provisions of this section, if such be the case. The department shall so certify within thirty days of the date it received

notice, or within such additional period, not to exceed thirty days, as the department may request in writing addressed to the commissioner or administration giving notice.

§ 374-a. Interstate compact on the placement of children. 1. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I. PURPOSE AND POLICY

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. CONDITIONS FOR PLACEMENT

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may

deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. PENALTY FOR ILLEGAL PLACEMENT

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. RETENTION OF JURISDICTION

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect

of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. INSTITUTIONAL CARE OF DELINQUENT CHILDREN

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. COMPACT ADMINISTRATOR

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. LIMITATIONS

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or

non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. ENACTMENT AND WITHDRAWAL

This compact shall be open to joinder by any state, territory or possession of the United States, the district of Columbia, the commonwealth of Puerto Rico, and, with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

2. Any requirement of this state for a license, permit, or the posting

of a bond to entitle an agency to place children shall not apply to a public sending agency (within the meaning of the interstate compact on the placement of children) of or in another state party to said compact.

3. Financial responsibility for any child placed pursuant to the provisions of the interstate compact for the placement of children shall be determined in accordance with the provisions of article five thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of section three hundred eighty-two of this chapter with respect to such responsibility also may be invoked.

4. The "appropriate public authorities" as used in article three of the interstate compact on the placement of children shall, with reference to New York, mean the department of social services, except that, with respect to the placement of children "adjudicated delinquent", as that phrase is used in article six thereof, who are to be placed in a facility operated or supervised by the division for youth, shall mean the division for youth, and said department and division shall receive and act with reference to notices required by said article three.

5. As used in paragraph (a) of article five of the interstate compact on the placement of children the phrase "appropriate authority in the receiving state" with reference to New York state shall mean the commissioner of social services of the social services district in which the child may be at the time of discharge, and, with respect to children "adjudicated delinquent", as that phrase is used in article six thereof, who are to be discharged from a facility operated or supervised by the division for youth, shall mean the division for youth.

6. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of article five of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state

or subdivision or agency thereof shall not be binding unless it has the approval in writing of the comptroller in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

7. Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections three hundred eighty-two, three hundred eighty-six or three hundred ninety-eight of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of article five of the interstate compact on the placement of children.

8. Neither the prohibition of, nor the limitations on out of state placement of children contained in sections three hundred seventy-four and three hundred ninety-eight of this chapter shall apply to placements made pursuant to the interstate compact on the placement of children.

9. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to article six of the interstate compact on the placement of children and shall retain jurisdiction as provided in article five thereof.

10. As used in article seven of the interstate compact on the placement of children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said article seven.

11. (a) In addition to the conditions for placement set forth in subdivision one of this section, the sending agency shall, in the case of a placement preliminary to a possible adoption, submit to the compact administrator a full statement setting forth all fees, including the categories of such fees, paid and to be paid by the adoptive parent to any agency or person in exchange for the adoptive placement.

(b) The compact administrator shall not approve a proposed placement where such placement violates subdivision six of section three hundred

seventy-four of this chapter.

12. Placement of a child in this state in violation of subdivision one of this section by an out of state sending agency shall, in addition to any other remedy or sanction imposed by law, subject the agency violating such provision to a civil action for money damages including fees, compensation and other remuneration paid by any person on account of or incident to the placement of a child in violation of such provision.

Placement of a child by an out of state sending agency in violation of such provision shall subject such agency to the exercise of personal jurisdiction over such agency by a court pursuant to subparagraph (i) of paragraph three of subdivision (a) of section three hundred two of the civil practice law and rules.

§ 374-b. Authority to operate agency boarding home. 1. An authorized agency which is not a court, public board, commission, or official, is hereby empowered and permitted to operate agency boarding homes in compliance with regulations of the department; and a social services official who is authorized to place children in family homes and institutions, pursuant to section three hundred ninety-eight, may be authorized by the department to operate agency boarding homes, in compliance with such regulations, if such official applies for such authority and demonstrates to the department his need therefor and that suitable care is not otherwise available for children and/or minors under the care of such official through an authorized agency under the control of persons of the same religious faith as such children. No agency boarding home shall care for more than six children or minors except that such a home may provide care for more than six brothers and sisters of the same family. Such homes shall be subject to supervision, visitation and inspection by the department and shall also be subject to visitation and inspection by the board.

2. (a) If an authorized agency plans to establish one or more boarding homes within a municipality, it shall notify the chief executive officer

of the municipality in writing of its intentions and include in such notice a description of the nature, size and the community support requirements of the program.

(b) For purposes of this subdivision, "municipality" means an incorporated village, if a facility is to be located therein; a town, if the facility is to be located therein, and not simultaneously within an incorporated village; or a city, except that in the city of New York, the community board with jurisdiction over the area in which such a facility is to be located shall be considered the municipality.

3. An authorized agency that has received approval from the office of children and family services may operate a supervised independent living program, as defined in section three hundred seventy-one of this title. The office of children and family services shall promulgate regulations establishing the standards for approval and operation of supervised independent living programs.

§ 374-c. Authority to operate group homes. 1. An authorized agency which is not a court, public board, commission or official is hereby empowered and permitted to operate group homes in compliance with regulations of the department. A social services official who is authorized to place children in family homes and institutions, pursuant to section three hundred ninety-eight, may be authorized by the department to operate group homes in compliance with such regulations, provided that such official demonstrates to the satisfaction of the department the need therefor and that suitable care is not otherwise available for children under the care of such official through an authorized agency under the control of persons of the same religious faith as such children. Such homes shall be subject to supervision, visitation and inspection by the department and shall also be subject to visitation and inspection by the board.

2. (a) If an authorized agency plans to establish one or more group homes within a municipality, it shall notify the chief executive officer of the municipality in writing of its intentions and include in such notice a description of the nature, size and the community support

requirements of the program.

(b) For purposes of this subdivision, "municipality" means an incorporated village, if a facility is to be located therein; a town, if the facility is to be located therein, and not simultaneously within an incorporated village; or a city, except that in the city of New York, the community board with jurisdiction over the area in which such a facility is to be located shall be considered the municipality.

§ 374-d. Authority to operate public institutions for children. A social services official who is authorized to place children in family homes and institutions, pursuant to section three hundred ninety-eight, may be authorized by the department to operate public institutions for children in compliance with regulations of the department, provided that such official demonstrates to the satisfaction of the department the need therefor and that suitable care is not otherwise available for children under the care of such official. Such institutions shall be subject to supervision, visitation and inspection by the department and shall also be subject to visitation and inspection by the board.

§ 374-e. Authority to place out or board out children with therapeutic foster parents. A social services official or agency who is authorized to place out or board out children pursuant to section three hundred ninety-eight or three hundred seventy-four of this article, is authorized by the department to place out or board out children having special needs with therapeutic foster parents pursuant to subdivision fifteen of section three hundred ninety-eight of this article and in compliance with regulations of the department. Such placement shall only be made, however, when the official or agency demonstrates to the satisfaction of the department that state expenditures incurred in placing a child with a therapeutic foster parent are less than those that would be incurred if the children were placed in an institution.

§ 374-f. Authority to enter into leases for dwelling units. Any inconsistent provisions of this chapter or any other law

notwithstanding, a public welfare official authorized to operate agency boarding homes or group homes is hereby empowered to rent or lease dwelling units in his capacity as a public welfare official, as lessee, in any federal project, state project or municipal project, as defined in the public housing law, or in any municipally-aided project or state-aided project, or other project, as defined in the private housing finance law, or elsewhere, for the purpose of operating therein such agency boarding homes or group homes, and is hereby empowered to contract, in his capacity as a public welfare official, as contractor, with individuals for their services in conducting such homes and caring for children or minors placed in such homes.

§ 375. Requirement of certificate or license to board children.

Except for relatives within the second degree or third degree of the parents of a child or children, relatives within the second degree or third degree of the step-parent of a child or children, legally appointed guardians, schools and academies meeting the requirements of the education law as to compulsory education, camps operated for profit for the accommodation of school age children during school vacation periods under permits issued by health officers pursuant to chapter seven of the state sanitary code, and persons with whom a child or children are placed out, no person shall receive, board or keep any child under the age of eighteen years unless certified or licensed to do so as provided in this title.

§ 376. Certificate to board children and/or minors under age of eighteen years. 1. An authorized agency which shall board out any child and/or minor under the age of eighteen years shall issue to the person receiving such child and/or minor for board a certificate to receive, board or keep a child and/or minor under the age of eighteen years. Prior to issuing such certificate, the agency shall require that an applicant set forth: his or her employment history, provide personal and employment references and sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction. In accordance with

the regulations of the office of children and family services, in addition to the requirements set forth in subdivision two of section three hundred seventy-eight-a of this title and paragraph (a) of subdivision one of section four hundred twenty-four-a of this article, the agency shall review information available in the statewide automated child welfare information system to determine whether the applicant previously held such a certificate, or a license or approval as a foster parent and, if so, whether such certificate, license or approval was revoked, not renewed, or a foster child was removed from his or her home for health or safety reasons and shall consider such information in determining whether a certificate should be issued to such applicant. Not until all inquiries are completed and evaluated shall the agency cause such certificate to be issued.

2. The agency issuing or renewing any such certificate shall forthwith transmit a copy or report thereof to the board.

3. No person shall be certified by more than one authorized agency but any person so certified may receive for care at board or otherwise a child and/or minor under the age of eighteen years from other sources upon the written consent and approval of the certifying agency as to each such child and/or minor.

§ 377. License to board children. 1. Application for a license to receive, board or keep any child shall be made in writing to the commissioner of social services in and for the social services district wherein the premises to be licensed are located, in the form and manner prescribed by the office of children and family services. The office shall require that an applicant set forth: his or her employment history, provide personal and employment references and sign a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction. In accordance with the regulations of the office of children and family services, in addition to the requirements set forth in subdivision two of section three hundred seventy-eight-a of this title and paragraph (a) of subdivision one of section four hundred

twenty-four-a of this article, such commissioner of social services shall review information available in the statewide automated child welfare information system to determine whether the applicant previously held such a license, or a certificate or approval as a foster parent, and, if so, whether such license, certificate or approval was revoked, not renewed, or a foster child was removed from his or her home for health or safety reasons and shall consider such information in determining whether a license should be issued to such applicant. Not until all inquiries are completed and evaluated shall the commissioner of social services cause such license to be issued.

2. Before any such license shall be issued an authorized agent or employee of the social services district shall visit and inspect the premises for which such license is requested, make such further inquiry and investigation as may be required to ascertain compliance with applicable requirements.

3. If it appears from such inquiry and investigation that the applicant maintains a home suitable for the care of children in accordance with the regulations of the department, the commissioner of social services shall cause such license to be issued in such manner as the department may provide.

4. The commissioner of social services, issuing or renewing any such license, shall in accordance with the directions of the department, transmit a copy or report thereof to the department.

§ 378. Form, duration and limitation of certificates and licenses. 1. Certificates or licenses to receive, board or keep any child and/or minor shall be in the form prescribed and provided by the department to the effect that such person is regarded by the issuing authorized agency or social services department, as the case may be, as maintaining a home suitable for the care of children and/or minors and specifying the name, address, and religious faith of the person to whom issued, the number of children and/or minors for whom such person is certified or licensed to care and such other information as the department may require.

2. Such certificates and licenses shall be valid for not more than two years after date of issue but may be renewed or extended subject to regulations established by the office of children and family services.

3. No such license shall permit the reception for board of more than six children and if there are children not received for board living in the home of a person to whom such license is issued, whether children of such person or otherwise, the sum of the number of such children and of the number of children permitted to be received for board by such license shall not exceed six, excepting, however, that such license may permit the reception for board of additional children if such children (a) are siblings or half-siblings, or are siblings or half-siblings of a child living in the home, (b) are children freed for adoption as defined in subdivision (b) of section one thousand eighty-seven of the family court act, and have been placed for adoption with the person to whom such license is issued, or (c) are minor parents who are foster children and the minor parents' children.

4. No such certificate shall permit the reception for board of more than six children and/or minors and if there are children under thirteen years of age not received for board living in the home of the person to whom such certificate is issued, whether children of such person or otherwise, the total number of such children and of the number of children and/or minors permitted to be received for board by such certificate shall not exceed six, excepting, however, that such certificate may permit the reception for board of up to two additional children if such children (a) are siblings or half-siblings, or are siblings or half-siblings of a child living in the home, (b) are children freed for adoption as defined in subdivision (b) of section one thousand eighty-seven of the family court act, and have been placed for adoption with the person to whom such certificate is issued, or (c) are minor parents who are foster children and the minor parents' children.

5. The department shall establish and may alter or amend regulations governing the issuing and revocation of such licenses and certificates and prescribing standards, records, accommodations and equipment for the

care of children and/or minors received under such licenses and certificates.

§ 378-a. Access to conviction records by authorized agencies. 1.

Every authorized agency which operates a residential program for children licensed or certified by the office of children and family services, and the office of children and family services in relation to any juvenile justice program it operates, shall request that the justice center for the protection of people with special needs check, and upon such request, such justice center shall request and shall be authorized to receive from the division of criminal justice services and the federal bureau of investigation criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law concerning each prospective operator, employee or volunteer of such a residential program who will have regular and substantial unsupervised or unrestricted physical contact with children in such program.

(a) Provided however, any authorized agency required to request criminal history information pursuant to this subdivision that operates a residential program for foster children that is licensed or certified by the office of children and family services shall request that the justice center for the protection of people with special needs check, and upon such request, such justice center shall request and shall be authorized to receive from the division of criminal justice services and the federal bureau of investigation criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, for every: (i) prospective employee of such program that is not already required to be cleared pursuant to the opening paragraph of this subdivision; and (ii) notwithstanding any other provision of law to the contrary, prior to April first, two thousand twenty and in accordance with a schedule developed by the office of children and family services, any person who is employed in a residential foster care program that has not previously had a clearance conducted pursuant to this section in connection to such employment.

(b) For the purposes of this section, "operator" shall include any

natural person with an ownership interest in the authorized agency.

(c) Access to and the use of information obtained pursuant to this subdivision shall be governed by the provisions of section eight hundred forty-five-b of the executive law.

1-a. Excluding the authorized agencies authorized to request and receive criminal history information pursuant to subdivision one of this section, and subject to the rules and regulations of the division of criminal justice services, an authorized agency defined in subdivision ten of section three hundred seventy-one of this title shall have access to criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, pertaining to persons who have applied for and are under active consideration for employment by such authorized agency in positions where such persons will have the potential for regular and substantial unsupervised and unrestricted physical contact with children in the program. Upon receipt of such criminal history information, the authorized agency shall provide the prospective employee with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such prospective employee of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services. The authorized agency shall designate one or two persons in its employ who shall be authorized to request, receive and review the criminal history information pursuant to this subdivision, and only such persons and the prospective employee to which the criminal history information relates shall have access to such information; provided, however, that such criminal history information may be disclosed to other personnel empowered by the agency to make decisions concerning prospective employees. The authorized agency shall notify the division of criminal justice services of each person authorized to have access to such criminal history information pursuant to this subdivision. Except as otherwise provided in this subdivision, such criminal history information shall be confidential and any person who willfully permits the release of such confidential criminal history information to persons not permitted by this subdivision to receive such information shall be

guilty of a misdemeanor.

2. (a) Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the division of criminal justice services, an authorized agency, as defined in subdivision ten of section three hundred seventy-one of this title, shall perform a criminal history record check with the division of criminal justice services regarding any prospective foster parent or prospective adoptive parent or, a prospective successor guardian in accordance with paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, and any person over the age of eighteen who is currently residing in the home of such prospective foster parent, prospective adoptive parent or prospective successor guardian. Provided, however, that for prospective foster parents and prospective adoptive parents and other persons over the age of eighteen in their homes, the checks required by this paragraph shall be conducted before the foster parent or adoptive parent is finally certified or approved for the placement of a child. Persons who are over the age of eighteen residing in the home of a certified or approved foster parent and who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the foster parent applies for renewal of his or her certification or approval as a foster parent. The division of criminal justice services is authorized to submit fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check pursuant to and consistent with public law 92-544 to determine whether such prospective foster parent, prospective adoptive parent, prospective successor guardian or person over the age of eighteen currently residing in the home of such prospective parent or guardian has a criminal history in any state or federal jurisdiction. The provisions and procedures of this section, including the criminal history record check of persons over the age of eighteen who are currently residing in the home of the foster parent, also shall apply to prospective foster parents certified by the office of children and family services and to family homes certified by any other state agency where such family homes care for foster children in accordance with a memorandum of understanding with the office of children and family services.

(b) Every authorized agency shall obtain a set of the prospective foster parent, prospective adoptive parent or prospective successor guardian's fingerprints and those of any person over the age of eighteen who currently resides in the home of such prospective foster parent, prospective adoptive parent or prospective successor guardian, and such other information as is required by the office of children and family services and the division of criminal justice services. The authorized agency shall provide to the applicant blank fingerprint cards and a description of how the completed fingerprint cards will be used upon submission to the authorized agency. The authorized agency shall promptly transmit such fingerprint cards to the office of children and family services. The office of children and family services shall promptly submit such fingerprint cards and the processing fee imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law to the division of criminal justice services for its full search and retain processing. Notwithstanding any other provision of law to the contrary, the processing fee shall be submitted by the office of children and family services and no part thereof shall be charged to the prospective foster parent, prospective adoptive parent, prospective successor guardian or any person over the age of eighteen who currently resides in the home of such prospective foster parent, prospective adoptive parent or prospective successor guardian who submitted a fingerprint card pursuant to this subdivision.

(c) The division of criminal justice services shall promptly provide to the office of children and family services a criminal history record, if any, with respect to the prospective foster parent, prospective adoptive parent or prospective successor guardian and any other person over the age of eighteen who resides in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian, or a statement that the individual has no criminal history record.

(d) Notwithstanding any other provision of law to the contrary, the office of children and family services, upon receipt of a criminal history record from the division of criminal justice services, may request, and is entitled to receive, information pertaining to any offense contained in such criminal history record from any state or local law enforcement agency or court for the purposes of determining

whether any ground relating to such criminal conviction or pending criminal charge exists for denying an application.

(e) Except as set forth in paragraph (m) of this section, after reviewing any criminal history record information provided by the division of criminal justice services, the office of children and family services shall promptly notify the authorized agency or other state agency that:

(1) Notwithstanding any other provision of law to the contrary, an application for certification or approval of a prospective foster parent or prospective adoptive parent shall be denied and, in the event of death or incapacity of a relative guardian, an agreement to provide payments to a prospective successor guardian pursuant to title ten of this article shall not be approved pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, as applicable, where a criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian, as applicable, reveals a conviction for:

(A) a felony conviction at any time involving: (i) child abuse or neglect; (ii) spousal abuse; (iii) a crime against a child, including child pornography; or (iv) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; or

(B) a felony conviction within the past five years for physical assault, battery, or a drug-related offense, unless such offense is eligible for expungement pursuant to section 160.50 of the criminal procedure law; or

(2) Notwithstanding any other provision of law to the contrary, a final determination of an application for certification or approval of a prospective foster parent or prospective adoptive parent and, in relation to prospective successor guardians, approval pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article shall be held in abeyance whenever the criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian, as applicable, reveals:

(A) a charge for a crime set forth in subparagraph one of this paragraph which has not been finally resolved; or

(B) a felony conviction that may be for a crime set forth in subparagraph one of this paragraph. An authorized agency may proceed with a determination of such application, in a manner consistent with this subdivision, only upon receiving subsequent notification from the office of children and family services regarding the status of such charge or the nature of such conviction; or

(3) consistent with the provisions of article twenty-three-A of the correction law, an application for certification or approval of a prospective foster parent or prospective adoptive parent may be denied, an agreement to provide payments to a prospective successor guardian pursuant to title ten of this article may not be approved pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, as applicable, where:

(A) a criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian reveals a charge or a conviction of a crime other than one set forth in subparagraph one of this paragraph; or

(B) a criminal history record of any other person over the age of eighteen who resides in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian reveals a charge or a conviction of any crime; or

(4) Notwithstanding any other provision of law to the contrary, an application for renewal of the certification or approval of a foster parent submitted on or after October first, two thousand eight shall be denied based on the conviction of the foster parent of a crime set forth in subparagraph one of this paragraph where such conviction occurred on or after October first, two thousand eight; or

(5) Notwithstanding any other provision of law to the contrary, the certification or approval of a foster parent, or the approval of an adoptive parent who has not completed the adoption process, shall be revoked based on the conviction of the foster parent or the adoptive parent of a crime set forth in subparagraph one of this paragraph; or

(6) the prospective foster parent, prospective adoptive parent or prospective successor guardian and any person over the age of eighteen who is residing in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian has no criminal history record.

(f) Except as otherwise set forth in this paragraph, any notification by the office of children and family services pursuant to paragraph (e) of this subdivision shall include a summary of the criminal history record provided by the division of criminal justice services, including, but not limited to, the specific crime or crimes for which the prospective foster parent or parents, adoptive parent or parents or prospective successor guardian or guardians or any adults over the age of eighteen living in the home have been charged or convicted, as applicable. When responding to an inquiry from a voluntary authorized agency or other non-public agency with respect to the results of a national criminal history check performed by the federal bureau of investigation, the office of children and family services shall advise the voluntary authorized agency or other non-public agency of the category or categories of crime or crimes and shall not provide the voluntary authorized agency or other non-public agency with the specific crime or crimes absent the written consent of the person for whom the national criminal history check was performed.

(g) When an authorized agency has denied an application or approval in accordance with the provisions of paragraph (e) of this subdivision, the authorized agency shall provide to the applicant a written statement setting forth the reasons for such denial, including, as authorized by paragraph (f) of this subdivision, the summary of the criminal history record provided to the authorized agency by the office of children and family services. The authorized agency shall also provide a description of the division of criminal justice services' record review process and any remedial processes provided by the office of children and family services to any prospective foster parent, prospective adoptive parent or prospective successor guardian. If the applicant is disqualified under item (ii) of clause (A) of subparagraph one of paragraph (e) of this subdivision, then the applicant may apply for relief from the mandatory disqualification based on the grounds that the offense was not spousal abuse as that term is defined in paragraph (j) of this subdivision.

(h) Where a criminal history record of the certified or approved foster parent, prospective adoptive parent or of any other person over the age of eighteen who resides in the home of the certified or approved foster parent or prospective adoptive parent reveals a charge or

conviction of any crime, the authorized agency shall perform a safety assessment of the conditions in the household. Such assessment shall include: whether the subject of the charge or conviction resides in the household; the extent to which such person may have contact with foster children or other children residing in the household; and the status, date and nature of the criminal charge or conviction. The authorized agency shall thereafter take all appropriate steps to protect the health and safety of such child or children, including, when appropriate, the removal of any foster child or children from the home. Where the authorized agency denies the application or revokes the approval or certification of the foster parent or the prospective adoptive parent in accordance with the standards set forth in paragraph (e) of this subdivision, such authorized agency shall remove any foster child or children from the home of the foster parent or the prospective adoptive parent.

(i) Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to an authorized agency pursuant to this subdivision, is confidential and shall not be available for public inspection; provided, however, nothing herein shall prevent an authorized agency, the office of children and family services or other state agency referenced in paragraph (a) of this subdivision from disclosing criminal history information to any administrative or judicial proceeding relating to the denial or revocation of a certification or approval of a foster parent or an adoptive parent or the removal of the foster child from the home or the failure to approve a prospective successor guardian pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article or the termination of an agreement for payments pursuant to title ten of this article that is made in accordance with paragraph (h) of subdivision four of section four hundred fifty-eight-b of this article. Where there is a pending court case, the authorized agency which received the criminal history record summary from the office of children and family services, shall provide a copy of such summary to the family court or surrogate's court.

(j) For the purposes of this subdivision "spousal abuse" is an offense defined in section 120.05, 120.10, 121.12 or 121.13 of the penal law

where the victim of such offense was the defendant's spouse; provided, however, spousal abuse shall not include a crime in which the prospective foster parent, prospective adoptive parent or prospective successor guardian, who was the defendant, has received notice pursuant to paragraph (g) of this subdivision and the office of children and family services finds after a fair hearing held pursuant to section twenty-two of this chapter, that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the prospective foster parent, prospective adoptive parent or prospective successor guardian to commit such offense.

(k) The office of children and family services shall inform the division of criminal justice services when a person is no longer certified or approved as a foster parent or is no longer a prospective adoptive parent so that the division of criminal justice services may terminate its retain processing with regard to such person and any person over the age of eighteen who is residing in the home of the foster parent or prospective adoptive parent. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

(l) The office of children and family services, in consultation with the division of criminal justice services, shall promulgate regulations for the purpose of implementing the provisions of this subdivision relating to the standards for the certification or approval of foster parents or adoptive parents.

(m)(1) The office of children and family services shall not release the content of the results of the nationwide criminal history record check conducted by the federal bureau of investigation in accordance with this subdivision to an authorized agency, as defined in paragraphs (a) or (c) of subdivision ten of section three hundred seventy-one of this title.

(2) For any application made to such an authorized agency under this subdivision, the office of children and family services shall:

(A) review and evaluate the results of the nationwide criminal history record check of the prospective foster parent, prospective adoptive parent and any other person over the age of eighteen who resides in the

home of such applicant in accordance with the standards set forth in paragraph (e) of this subdivision relating to mandatory disqualifying convictions, hold in abeyance charges or convictions, and discretionary charges and convictions; and

(B) based on the results of the nationwide criminal history record check, inform such authorized agency that the application for certification or approval of the prospective foster parent or the prospective adoptive parent either: (i) must be denied; (ii) must be held in abeyance pending subsequent notification from the office of children and family services; or (iii) that the office of children and family services has no objection, solely based on the nationwide criminal history record check, for the authorized agency to proceed with a determination on such application based on the standards for certification or approval of a prospective foster parent or prospective adoptive parent, as set forth in the regulations of the office of children and family services.

(3) Where the office of children and family services directs the authorized agency to deny the application of a prospective foster parent or a prospective adoptive parent in accordance with this paragraph, the office of children and family services shall also notify the prospective foster parent, prospective adoptive parent or other person over the age of eighteen who resided in the home of the applicant whose criminal history was the basis for the denial and shall provide such prospective foster parent, prospective adoptive parent or other person a copy of the results of the nationwide criminal history record check upon which such denial was based and a written statement setting forth the reasons for such denial. If the applicant is disqualified under item (ii) of clause (A) of subparagraph one of paragraph (e) of this subdivision, then the applicant may apply for relief from the mandatory disqualification based on the grounds that the offense was not spousal abuse as that term is defined in paragraph (j) of this subdivision.

(4) This paragraph does not apply to nationwide criminal history record checks conducted by the federal bureau of investigation on behalf of state agencies or authorized agencies, as defined in paragraph (b) of subdivision ten of section three hundred seventy-one of this title, or to the results of statewide criminal history record checks conducted by the division of criminal justice services.

§ 379. Revocation of certificates and licenses. 1. A certificate or license to receive, board or keep any child and/or minor under the age of eighteen years may be revoked for cause by the authorized agency or the commissioner of social services by which it was issued and any such certificate or license to receive, board or keep any child may be revoked for cause by the commissioner.

2. An agency revoking any such certificate and a commissioner of social services revoking any such license shall notify the department of such revocation at once.

§ 380. Boarding and free homes; records. Every person who receives, boards or keeps a child and/or minor under a license or certificate shall keep a record in a register to be provided by the department showing the name, date of birth and religious faith of each child and/or minor received, the names and addresses of his parents or guardian or of the authorized agency from whom received and of the person by whom placed and by whom removed, the dates of reception and removal and such other information as may be required by the department.

§ 381. Maternity homes; records and reports. Every hospital or lying-in asylum whether incorporated or unincorporated where women or girls may be received, cared for or treated during pregnancy or during or after delivery and every person licensed to carry on like work under the provisions of article twenty-eight of the public health law shall keep a record showing the full and true name and address including street and number, if any, of every such woman or girl and of each child of such woman or girl received, admitted or born on the premises, the full and true names and addresses and the religious faith of the parents of every such child, the dates of reception, admission or birth and of discharge or departure of each such woman, girl or child, the full and true names and addresses of the person or persons by whom any such child is removed or taken away, the amount paid for the care of any such

woman, girl or child and the full and true names and addresses of the person or persons making such payment or payments; and shall keep such further record as may be required by regulations of the department. The department may, through its authorized agents and employees, at all reasonable times, inspect and examine such records and may require from such licensed person or from such hospital and its directors, officers, trustees, employees, manager, superintendent, owner or other person responsible for its operation, all information in their possession with reference to any such child not taken away or removed from such hospital by his parents or parent.

§ 382. Responsibility for children without state residence; license and board. 1. Any person, institution, corporation or agency which shall bring, or cause to be brought, into the state of New York any child not having a state residence, or which shall receive or accept any child from outside of the state of New York, not having state residence, shall be responsible for the care and maintenance of such child whether placed out, boarded out or otherwise cared for unless adopted by foster parents. Such responsibility shall continue during the minority of such child and thereafter until he is self-supporting.

2. (a) It shall be unlawful for any person, agency, association, corporation, society, institution or other organization, except an authorized agency, to bring, send or cause to be brought or sent into the state of New York any child for the purpose of placing or boarding such child or procuring the placing of such child, by adoption, guardianship, or otherwise, in a family, a home or institution, except with an authorized agency, in this state, without first obtaining a license from the department.

(b) This subdivision shall not apply to a sending agency, as defined in article two of section three hundred seventy-four-a of this title, which is located in a state which is a party to the interstate compact on the placement of children, provided, however, that all persons who reside in such a state, except officers or employees of the state or a subdivision thereof who are acting in their official capacity, shall comply with the provisions of this section.

(c) This section shall not apply to and shall not restrict or limit the right of a parent, legal guardian, or relative within the second degree of a child from bringing or sending the child or causing the child to be brought or sent, into the state of New York for the purpose of placing out or boarding out the child.

3. Application for a license shall be submitted on a form approved and provided by the department and be accompanied by proof that the applicant holds a license, or is approved by the department or similar body in the state where the applicant resides, or where its chief office is located, or where it has its place of business.

4. Before bringing, sending, or causing to be brought or sent into this state any child, the person, agency, association, corporation, society, institution or other organization, duly licensed as provided in this section must furnish the department a blanket indemnity bond of a reputable surety company in favor of the state in the penal sum of not less than ten thousand dollars. Such bond must be approved as to form and sufficiency by the department and conditioned as follows:

That such licensee (a) will report to the department immediately the name of each such child, its age, the name of the state, and city, town, borough or village, or the name of the country from which such child came, the religious faith of the parents of the child, the full name and last residence of its parent or parents, the name of the custodian from whom it is taken, and the name and residence of the person or authorized agency with whom it is placed or boarded, released or surrendered, or to whom adoption or guardianship is granted, and the death of such child or any reboarding, replacement or other disposition;

(b) will remove from the state within thirty days after written notice is given any such child becoming a public charge during his minority;

(c) will remove from the state immediately upon its release any such child who within three years from the time of its arrival within the state is committed to an institution or prison as a result of conviction for juvenile delinquency or crime;

(d) will place or cause to be placed or board or cause to be boarded

such child under agreement which will secure to such child a proper home, and will make the person so receiving such child responsible for its proper care, education and training;

(e) will comply with section three hundred seventy-three;

(f) will supervise the care and training of such child and cause it to be visited at least annually by a responsible agent of the licensee; and

(g) will make to the department such reports as it from time to time may require.

5. In the event of the failure of such licensee to comply with the second and third conditions of the bond hereinbefore mentioned, and to remove, after thirty days' notice so to do, a child becoming a public charge, such portion of the bond shall be forfeited to the state or the county or municipality thereof as shall equal the sum which shall have been expended by the state or such county or municipality thereof for the care or maintenance or in the prosecution of such child or for its return to the licensee.

§ 383. Care and custody of children. 1. The parent of a child remanded or committed to an authorized agency shall not be entitled to the custody thereof, except upon consent of the court, public board, commission, or official responsible for the commitment of such child, or in pursuance of an order of a court or judicial officer of competent jurisdiction, determining that the interest of such child will be promoted thereby and that such parent is fit, competent and able to duly maintain, support and educate such child. The name of such child shall not be changed while in the custody of an authorized agency.

2. The custody of a child placed out or boarded out and not legally adopted or for whom legal guardianship has not been granted shall be vested during his minority, or until discharged by such authorized agency from its care and supervision, in the authorized agency placing out or boarding out such child and any such authorized agency may in its discretion remove such child from the home where placed or boarded.

3. Any adult husband and his adult wife and any adult unmarried person, who, as foster parent or parents, have cared for a child continuously for a period of twelve months or more, may apply to such authorized agency for the placement of said child with them for the purpose of adoption, and if said child is eligible for adoption, the agency shall give preference and first consideration to their application over all other applications for adoption placements. However, final determination of the propriety of said adoption of such foster child shall be within the sole discretion of the court, as otherwise provided herein.

Foster parents having had continuous care of a child, for more than twelve months, through an authorized agency, shall be permitted as a matter of right, as an interested party to intervene in any proceeding involving the custody of the child. Such intervention may be made anonymously or in the true name of said foster parents.

4. An adult married person who has executed a legally enforceable separation agreement or is a party to a marriage in which a valid decree of separation has been entered and who becomes or has been the custodian of a child placed in their care as a result of court ordered foster care may apply to such authorized agency for placement of said child with them for the purpose of adoption. Applications filed pursuant to this subdivision by persons who, as foster parents, have cared for a child continuously for a period of twelve months or more shall be entitled to the same consideration and preference as are given to applications filed pursuant to subdivision three of this section. Final determination of the propriety of said adoption of such foster child, however, shall be within the sole discretion of the court, as otherwise provided herein.

5. Any proceeding brought in connection with the provisions of this section shall have preference over all other causes in all courts.

§ 383-a. Immunity from liability for application of the reasonable and prudent parent standard. 1. Legislative intent. It is the intent of the legislature to promote a safe and nurturing environment for children in

foster care that, among other things, allows them to engage in age and developmentally appropriate activities with their peers. It is also the intent of the legislature to encourage caregivers to allow foster children to participate in such activities by providing training, guidance, and appropriate liability protections when caregivers make reasonable and prudent decisions with regard to such activities. It is not the intent of the legislature to relieve caregivers or any other person of any duty or responsibility owed to a foster child.

2. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Caregiver" shall mean the following person or entity at the time that such person or entity was responsible for the care of the foster child or children:

(i) a foster parent who has been trained in the reasonable and prudent parent standard in accordance with 42 U.S.C. 671 as amended by P.L. 113-183 and the regulations of the office of children and family services; or

(ii) the employee of a child care facility operated by an authorized agency that is designated to apply the reasonable and prudent parent standard who has been trained in the reasonable and prudent parent standard in accordance with 42 U.S.C. 671 as amended by P.L. 113-183 and the regulations of the office of children and family services.

(b) "Child" shall mean a child who is in foster care or who was in foster care at the time the reasonable and prudent parent standard was applied.

(c) "Child care facility" shall mean an institution, group residence, group home, agency operated boarding home, or supervised setting, including a supervised independent living program.

(d) "Reasonable and prudent parent standard" shall mean, in accordance with 42 U.S.C. 675 as amended by P.L. 113-183, the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural or social activities.

(e) "Age or developmentally-appropriate" shall mean:

(i) activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(ii) in the case of a specific child, activities or items that are suitable for the child based on the developmental stage attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

3. Caregivers shall apply the reasonable and prudent parent standard when deciding whether or not to allow a child in foster care to participate in age or developmentally appropriate extracurricular, enrichment, cultural, or social activities. Where such decisions require the input or permission of a local department of social services or a voluntary authorized agency, such department or agency shall also apply the reasonable and prudent parent standard in making a decision about participation in such activities.

4. Whether or not a caregiver is liable for injuries to the child that occur as a result of participation in age or developmentally appropriate extracurricular, enrichment, cultural, or social activities shall be determined based upon whether such decision to allow participation was made in compliance with the standard defined in paragraph (d) of subdivision two of this section and any other factors as required by law. Where such child is injured as a result of the decision to allow participation in such activities, a caregiver shall not be liable for such injuries if the decision to allow such participation was made in compliance with the reasonable and prudent parent standard as set forth herein. Provided however nothing in this section shall otherwise limit the ability of a child to bring an action against a caregiver or any other party whose acts or omissions result in injury to such child. Where a local department of social services or voluntary authorized agency has made or been involved in the decisions under subdivision three of this section, the liability standards for caregivers shall apply to such district or agency.

§ 383-b. Medical treatment for abused, neglected and destitute children; consent of commissioners. The local commissioner of social services or the local commissioner of health may give effective consent for medical, dental, health and hospital services for any child who has been found by the family court to be an abused, neglected or destitute child, or who has been taken into or kept in protective custody or removed from the place where he or she is residing, or who has been placed in the custody of such commissioner, pursuant to section four hundred seventeen of this article or section one thousand twenty-two, section one thousand twenty-four, section one thousand twenty-seven, section one thousand ninety-four or section one thousand ninety-five of the family court act.

§ 383-c. Guardianship and custody of children in foster care. 1. Method. For the purposes of this section, a child in foster care shall mean a child in the care and custody of an authorized agency pursuant to section three hundred eighty-four-a of this title or article three, seven or ten of the family court act. The guardianship of the person and the custody of a child in foster care under the age of eighteen years may be committed to an authorized agency by a written instrument which shall be known as a surrender, and signed:

(a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;

(b) if either one of such parents shall have for a period of six months then next preceding abandoned such child as set forth in section three hundred eighty-four-b of this title, by the other of such parents;

(c) if such child is born out of wedlock, by the mother of such child, and by the father of such child, if such father's consent would be required for the child's adoption, pursuant to section one hundred eleven of the domestic relations law;

(d) if both parents of such child are dead, or if such child is born out of wedlock and the mother of such child is dead, by the guardian of the person of such child lawfully appointed, with the approval of the

court or officer which appointed such guardian to be entered of record.

2. Terms. (a) Such guardianship shall be in accordance with the provisions of this article and the instrument shall be upon such terms and subject to such conditions as may be agreed upon by the parties thereto and shall comply with subdivision five of this section; provided, however, that an authorized agency shall not accept a surrender instrument conditioned upon adoption by a particular person, unless such person is a certified or approved foster parent, where the permanency plan for the child is for the child to be adopted by that person or the agency has fully investigated and approved such person as an adoptive parent in accordance with applicable statute and regulations. No such agency shall draw or receive money from public funds for the support of any such child except upon the written order or permit of the social services official of the county or city sought to be charged with the support of such child.

(b) If a surrender instrument designates a particular person or persons who will adopt a child, such person or persons, the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney, may enter into a written agreement providing for communication or contact between the child and the child's parent or parents on such terms and conditions as may be agreed to by the parties. If a surrender instrument does not designate a particular person or persons who will adopt the child, then the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney may enter into a written agreement providing for communication or contact, on such terms and conditions as may be agreed to by the parties. Such agreement also may provide terms and conditions for communication with or contact between the child and the child's biological siblings or half-siblings, if any. If any such sibling or half-sibling is fourteen years of age or older, such terms and conditions shall not be enforceable unless such sibling or half-sibling consents to the agreement in writing. If the court before which the surrender instrument is presented for approval determines that the agreement concerning communication and contact is in the child's best interests, the court shall approve the agreement. If the court does not approve the agreement, the court may nonetheless

approve the surrender; provided, however, that the birth parent or parents executing the surrender instrument shall be given the opportunity at that time to withdraw such instrument. Enforcement of any agreement prior to the adoption of the child shall be in accordance with subdivision (b) of section one thousand fifty-five-a of the family court act. Subsequent to the adoption of the child, enforcement of any agreement shall be in accordance with section one hundred twelve-b of the domestic relations law.

3. Judicial surrenders. (a) A surrender of a child to an authorized agency for the purpose of adoption may be executed and acknowledged before a judge of the family court or a surrogate in this state. If the child being surrendered is in foster care as a result of a proceeding before the family court pursuant to article ten or ten-A of the family court act or section three hundred fifty-eight-a of this chapter, the surrender shall be executed and acknowledged before the family court that exercised jurisdiction over such proceeding and, shall be assigned, wherever practicable, to the judge who last presided over such proceeding. A surrender executed and acknowledged before a court in another state shall satisfy the requirements of this section if it is executed by a resident of the other state before a court of record which has jurisdiction over adoption proceedings in that state, and a certified copy of the transcript of that proceeding, showing compliance with paragraph (b) of this subdivision, is filed as part of the adoption proceeding in this state.

(b) Before a judge or surrogate approves a judicial surrender, the judge or surrogate may order that notice of the surrender proceeding be given to such persons as the judge or surrogate may, in his or her discretion, prescribe. At the time that a parent appears before a judge or surrogate to execute and acknowledge a surrender, the judge or surrogate shall inform such parent of the right to be represented by legal counsel of the parent's own choosing and of the right to obtain supportive counseling and of any right to have counsel assigned pursuant to section two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law. The judge or surrogate also shall inform the parent of the consequences of such surrender, including

informing such parent that the parent is giving up all rights to have custody, visit with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms pursuant to subdivision two of this section, or, if the parent registers with the adoption information register, as specified in section forty-one hundred thirty-eight-d of the public health law, that the parent may be contacted at any time after the child reaches the age of eighteen years, but only if both the parent and the adult child so choose. The court shall determine whether the terms and conditions agreed to by the parties pursuant to subdivision two of this section are in the child's best interests before approving the surrender. The judge or surrogate shall inform the parent that where a surrender containing conditions has been executed, the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument. The judge or surrogate also shall inform the parent that the surrender shall become final and irrevocable immediately upon its execution and acknowledgment. The judge or surrogate shall give the parent a copy of such surrender upon the execution thereof.

4. Extra-judicial surrenders. (a) In any case where a surrender is not executed and acknowledged before a judge or surrogate pursuant to subdivision three of this section, such surrender shall be executed and acknowledged by the parent, in the presence of at least two witnesses, before a notary public or other officer authorized to take proof of deeds. At least one witness shall be an employee of an authorized agency trained, in accordance with the regulations of the department of children and family services, to receive surrenders. At least one witness shall be a person who is either a licensed master social worker, licensed clinical social worker or an attorney and who is not an employee, volunteer, consultant or agent of or attorney for the authorized agency to which the child is being surrendered. The commissioner of the office of children and family services, after consultation with the chief administrator of the courts, shall

promulgate standards to help ensure the impartial selection and independence of such witnesses. Any witness may, if so commissioned, serve as notary under this subdivision.

(b) The authorized agency to which the child was surrendered shall file an application for approval of the extra-judicial surrender with the court in which the adoption proceeding is expected to be filed or, if not known, the family or surrogate's court in the county in which the agency has its principal office. If the child being surrendered is in foster care as a result of a proceeding before the family court pursuant to article ten or ten-A of the family court act or section three hundred fifty-eight-a of this chapter, the application shall be filed in the family court that exercised jurisdiction over such proceeding and, shall be assigned, wherever practicable, to the judge who last presided over such proceeding. The application shall be filed no later than fifteen days after execution of such surrender. The application shall be accompanied by affidavits from all the witnesses before whom the surrender was executed and acknowledged as provided for in paragraph (a) of this subdivision, stating:

(i) the date, time and place where the surrender was executed and acknowledged;

(ii) that the parent was provided with a copy of the surrender;

(iii) that the surrender was read in full to the parent in his or her principal language and the parent was given an opportunity to ask questions and obtain answers regarding the nature and consequences of the surrender, including the consequences of, and procedures to be followed in, cases of a substantial failure of a material condition, if any, contained in the surrender instrument and the obligation to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument; and

(iv) that the parent executed and acknowledged the surrender.

(c) The authorized agency to which a child is surrendered pursuant to this subdivision must affix an affidavit to the application, by an employee responsible for providing or arranging supportive counseling, which specifies:

(i) when supportive counseling was offered to the parent by the authorized agency;

(ii) whether the parent accepted the offer of supportive counseling; and

(iii) if accepted, when supportive counseling was provided and the nature of such supportive counseling.

(d) Before a judge or surrogate approves an extra-judicial surrender, the judge or surrogate shall order notice to be given to the person who executed the surrender and to such other persons as the judge or surrogate may, in his or her discretion, prescribe. No person who has received such notice and been afforded an opportunity to be heard may challenge the validity of a surrender approved pursuant to this subdivision in any other proceeding. Nothing in this section shall be deemed to dispense with the consent to adopt if otherwise required of any person who has not executed the surrender.

(e) The agency to which the child is surrendered promptly shall notify such court of any correspondence or communication received from the parent or a person on the parent's behalf subsequent to the execution of the surrender and prior to a final order of adoption of the child, if such correspondence or communication could reasonably indicate the parent's wish to revoke the surrender.

(f) The court shall enter an order either approving or disapproving the surrender. If the court disapproves the surrender, the surrender shall be deemed a nullity and without force or effect, and the court may direct that any subsequent surrender shall be executed only before the court in accordance with subdivision three of this section.

5. Instrument. (a) There shall be a form of instrument for a judicial surrender and a form of instrument for an extra-judicial surrender.

(b) The instrument for a judicial surrender and the instrument for an extra-judicial surrender shall be in a form prescribed by the commissioner after consultation with the chief administrator of the courts and shall state in plain language in conspicuous bold print on the first page:

(i) that the parent has the right, before signing the surrender, to speak to a lawyer of her or his own choosing and any other person she or he wishes; to have that lawyer and any other person present with her or

him at the time of the signing of the surrender; and has the right to ask the court to appoint a lawyer free of charge if the parent cannot afford to hire one; and has the right to have supportive counseling;

(ii) that the parent is giving up all rights to have custody, visit with, speak with, write to or learn about the child, forever, unless the parties have agreed to different terms pursuant to subdivision two of this section, and unless such terms are written in the surrender, or, if the parent registers with the adoption information register, as specified in section forty-one hundred thirty-eight-d of the public health law, that the parent may be contacted at anytime after the child reaches the age of eighteen years, but only if both the parent and the adult child so choose;

(iii) that the child will be adopted without the parent's consent and without further notice to the parent, and will be adopted by any person that the agency chooses, unless the surrender paper contains the name of the person or persons who will be adopting the child; and

(iv) that the parent cannot be forced to sign the surrender paper, and cannot be punished if he or she does not sign the paper; and would not be subject to any penalty for refusing to sign the surrender.

(c) A surrender instrument for a judicial surrender also shall state in plain language in conspicuous bold print at the beginning thereof that the surrender becomes final and irrevocable immediately upon execution and acknowledgement, and that the parent cannot bring a case in court to revoke the surrender or to regain custody of the child. Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(i) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the attorney for the child and the court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(ii) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and the child's attorney in accordance with section one

thousand fifty-five-a of the family court act within thirty days of such failure, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or attorney for the child may file such a petition at any time up to sixty days after notification of the failure. Such petition filed by a parent or attorney for the child must be filed prior to the child's adoption; and

(iii) the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this paragraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

(d) An extra-judicial surrender instrument also shall state in plain language in conspicuous bold print at the beginning thereof that:

(i) the name and address of the court in which the application for approval of the extra-judicial surrender will be filed;

(ii) that a revocation of the surrender will be effective if it is in writing and postmarked or received by the court named in the surrender within forty-five days of the signing of the surrender; and

(iii) that a revocation of the surrender more than forty-five days after its signing will not be effective if the child has been placed in an adoptive home, and the surrender shall be final and irrevocable and the parent cannot revoke the surrender or bring a case in court to revoke the surrender or regain custody of the child, and that the agency will not notify the parent when the child is placed in an adoptive home, and the parent may lose all rights at the end of the forty-five day period without further notice. Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(A) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the law guardian for the child and the

court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(B) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after notification of the failure. Such petition filed by a parent or law guardian must be filed prior to the adoption of the child; and

(C) the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this subparagraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

(e) Any surrender instrument subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be

forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision.

(f) A surrender shall be recorded in the office of the county clerk in the county where the surrender is executed, or where the principal office of such authorized agency is located, in a book which such county clerk shall provide and shall keep under seal. Such record shall be subject to inspection and examination only as provided in subdivisions three and four of section three hundred seventy-two of this title.

(g) Whenever the term surrender, surrender paper or surrender instrument is used in any law relating to the adoption of children in foster care, it shall mean and refer exclusively to the instrument described herein for the commitment of the guardianship of the person and the custody of a child to an authorized agency by the child's parent, parents or guardian, and in no case shall it be deemed to apply to any instrument purporting to commit the guardianship of the person and the custody of a child to any person other than an authorized agency, nor shall such term or the provisions of this section be deemed to apply to any instrument transferring the care and custody of a child to an authorized agency pursuant to section three hundred eighty-four-a of this title.

(h) Upon execution of a surrender instrument, the parent executing the surrender shall provide information to the extent known regarding the other parent, any person to whom the surrendering parent had been married at the time of the conception or birth of the child and any other person who would be entitled to consent to the adoption of the child pursuant to subdivision one of section one hundred eleven of the domestic relations law. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this paragraph shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the surrender.

6. Effect of surrender and revocation. (a) If the court disapproves

the surrender pursuant to subdivision four of this section, or if a revocation of an extra-judicial surrender is mailed and postmarked or otherwise delivered to the court named in the surrender within forty-five days of the execution of the surrender, such surrender shall be deemed a nullity, and the child shall be returned to the care and custody of the authorized agency.

(b) If a revocation of an extra-judicial surrender is mailed and postmarked or otherwise delivered to the court named in the surrender more than forty-five days after its execution and the child has not been placed in an adoptive home, such surrender shall be deemed a nullity, and the child shall be returned to the care and custody of the authorized agency. For the purposes of this subdivision, no child shall be deemed to have been placed in the home of adoptive parents unless the fact of such placement, the date thereof, the date of the agreement pertaining thereto and the names and addresses of the adoptive parents shall have been recorded in a bound volume maintained by the agency for the purpose of recording such information in chronological order. The absence of judicial approval of an extra-judicial surrender shall not revive, extend or toll the period for revocation of such surrender.

(c) In any case in which the authorized agency determines that the persons specified in the surrender will not adopt the child or in any other case of a substantial failure of a material condition prior to the finalization of the adoption of the child, the agency promptly shall notify the parent thereof, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, and shall notify the court and the law guardian for the child within twenty days. In any such case, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one thousand fifty-five-a of the family court act, as applicable, within thirty days, except for good cause shown, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such a filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after the notification of the failure. Such petition filed by a parent or law guardian must be filed prior to the adoption. Nothing in

this paragraph shall limit the rights and remedies, if any, available to the parties and the law guardian with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

(d) Nothing contained in this section shall bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of a surrender. No action or proceeding may be maintained by the surrendering parent or guardian for the custody of the surrendered child or to revoke or annul such surrender except as provided herein.

7. Surrenders by persons in foster care. Notwithstanding any other provision of law, a surrender for adoption executed by a parent, parents or guardian who is in foster care shall be executed only before a judge of the family court.

8. Adoption proceeding. (a) Upon the court's order approving the surrender, the attorney for the petitioning authorized agency shall promptly serve upon persons who have been approved by such agency as the child's adoptive parents, notice of entry of the order approving the surrender and advising such persons that they may commence an adoption proceeding. In accordance with the regulations of the department, the authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

(b) The adoptive parent may commence the adoption proceeding in a court of competent jurisdiction in accordance with subdivision three of section one hundred thirteen or subdivision two of section one hundred fifteen of the domestic relations law, as applicable; provided, however, that in the case of an extra-judicial surrender, such proceeding shall be initiated more than forty-five days after the surrender is executed. Commencement of such a proceeding shall not revive, extend or toll the period for revocation of an extra-judicial surrender pursuant to this section.

9. Intervention. (a) Any person or persons having custody of a child for the purpose of adoption through an authorized agency shall be permitted as a matter of right, as an interested party, to intervene in

any proceeding commenced to set aside a surrender purporting to commit a guardianship of the person or custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of such person.

(b) Any person or persons having custody for more than twelve months through an authorized agency for the purpose of foster care shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit the guardianship of the person and custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of such person or persons having custody of the child for the purpose of foster care.

10. Adoption and permanency hearing.

a. Upon acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to subdivision three or four of this section, the court shall inquire whether any foster parent or parents with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency, or disinterested person as such term is defined in subdivision three of section one hundred sixteen of the domestic relations law. The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.

b. Upon acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to subdivision three or four of this section, the court shall schedule an initial freed child permanency hearing pursuant to section one thousand eighty-nine of the family court act. Subsequent permanency hearings shall be held pursuant to section one thousand eighty-nine of the family court act.

11. Acceptance of surrender. Acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to this section shall not be construed to terminate any rights of the child to contact his or her siblings. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the surrender, termination of parental rights or death of a parent.

§ 384. Guardianship and custody of children not in foster care. 1.

Method. The guardianship of the person and the custody of a child who is not in foster care under the age of eighteen years may be committed to an authorized agency by a written instrument which shall be known as a surrender, and signed:

(a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;

(b) if either one of such parents shall have for a period of six months then next preceding abandoned such child, by the other of such parents;

(c) if such child is born out of wedlock, by the mother of such child, and by the father of such child, if such father's consent would be required for the child's adoption, pursuant to section one hundred eleven of the domestic relations law;

(d) if both parents of such child are dead, or if such child is born out of wedlock and the mother of such child is dead by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record.

2. Terms. (a) Such guardianship shall be in accordance with the provisions of this article and the instrument shall be upon such terms and subject to such conditions as may be agreed upon by the parties thereto. The instrument shall recite that the authorized agency is thereby authorized and empowered to consent to the adoption of such child in the place and stead of the person signing the instrument, and may recite that the person signing the instrument waives any notice of such adoption; provided, however, that an authorized agency shall not

accept a surrender instrument conditioned upon adoption by a particular person, unless the agency has fully investigated and certified or approved such person as a qualified adoptive parent. Any surrender instrument subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted, upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision. No such agency shall draw or receive money from public funds for the support of any such child except upon the written order or permit of the local social services official of the county or city sought to be charged with the support of such child.

(b) If a surrender instrument designates a particular person or persons who will adopt a child, such person or persons, the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney, may enter into a written agreement providing for communication or contact between the child and the child's parent or parents on such terms and conditions as may be agreed to by the parties.

If a surrender instrument does not designate a particular person or persons who will adopt the child, then the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney may enter into a written agreement providing for communication or contact, on such terms and conditions as may be agreed

to by the parties. Such agreement also may provide terms and conditions for communication with or contact between the child and the child's biological sibling or half-sibling, if any. If any such sibling or half-sibling is fourteen years of age or older, such terms and conditions shall not be enforceable unless such sibling or half-sibling consents to the agreement in writing. If the court before which the surrender instrument is presented for approval determines that the agreement concerning communication and contact is in the child's best interests, the court shall approve the agreement. If the court does not approve the agreement, the court may nonetheless approve the surrender; provided, however, that the birth parent or parents executing the surrender instrument shall be given the opportunity at that time to withdraw such instrument. Enforcement of any agreement prior to the adoption of the child shall be in accordance with subdivision (b) of section one thousand fifty-five-a of the family court act. Subsequent to the adoption of the child, enforcement of any agreement shall be in accordance with section one hundred twelve-b of the domestic relations law.

3. Instrument. The instrument herein provided shall be executed and acknowledged (a) before any judge or surrogate in this state having jurisdiction over adoption proceedings, except that if the child is being surrendered as a result of, or in connection with, a proceeding before the family court pursuant to article ten or ten-A of the family court act, the instrument shall be executed and acknowledged in the family court that exercised jurisdiction over such proceeding and shall be assigned, wherever practicable, to the judge who last presided over such proceeding; or (b) in the presence of one or more witnesses and acknowledged by such witness or witnesses, in the latter case before a notary public or other officer authorized to take proof of deeds, and shall be recorded in the office of the county clerk in the county where such instrument is executed, or where the principal office of such authorized agency is located, in a book which such county clerk shall provide and shall keep under seal. Such record shall be subject to inspection and examination only as provided in subdivisions three and four of section three hundred seventy-two of this title. Notwithstanding any other provision of law, if the parent surrendering the child for

adoption is in foster care the instrument shall be executed before a judge of the family court.

Whenever the term surrender or surrender instrument is used in any law relating to the adoption of children who are not in foster care, it shall mean and refer exclusively to the instrument hereinabove described for the commitment of the guardianship of the person and the custody of a child to an authorized agency by his parents, parent or guardian; and in no case shall it be deemed to apply to any instrument purporting to commit the guardianship of the person and the custody of a child to any person other than an authorized agency, nor shall such term or the provisions of this section be deemed to apply to any instrument transferring the care and custody of a child to an authorized agency pursuant to section three hundred eighty-four-a of this chapter.

Any person or persons having custody of a child for the purpose of adoption through an authorized agency shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit a guardianship of the person or custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of said person.

Any person or persons having custody for more than twelve months through an authorized agency for the purpose of foster care shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit the guardianship of the person and custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of said person or persons having custody of the child for the purpose of foster care.

A copy of such surrender shall be given to such surrendering parent upon the execution thereof. The surrender shall include the following statement: "I, (name of surrendering parent), this ____ day of _____, _____, have received a copy of this surrender. (Signature of surrendering parent)". Such surrendering parent shall so acknowledge the

delivery and the date of the delivery in writing on the surrender.

Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(i) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the attorney for the child and the court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(ii) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and the child's attorney in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or attorney for the child may file such a petition at any time up to sixty days after notification of such failure. Such petition filed by a parent or attorney for the child must be filed prior to the child's adoption; and

(iii) the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this paragraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

4. Upon petition by an authorized agency, a judge of the family court, or a surrogate, may approve such surrender, on such notice to such persons as the surrogate or judge may in his or her discretion prescribe. If the child is being surrendered as a result of, or in

connection with, a proceeding before the family court pursuant to article ten or ten-A of the family court act, the petition shall be filed in the family court that exercised jurisdiction over such proceeding and shall be assigned, wherever practicable, to the judge who last presided over such proceeding. The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to section three hundred eighty-four-c of this title, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to such section. No person who has received such notice and been afforded an opportunity to be heard may challenge the validity of a surrender approved pursuant to this subdivision in any other proceeding. However, this subdivision shall not be deemed to require approval of a surrender by a surrogate or judge for such surrender to be valid.

5. If a duly executed and acknowledged adoption surrender shall so recite, no action or proceeding may be maintained by the surrendering parent or guardian for the custody of the surrendered child or to revoke or annul such surrender where the child has been placed in the home of adoptive parents and more than thirty days have elapsed since the execution of the surrender or where the purpose of such action or proceeding is to return the child to or vest the child's custody in any person other than the parent or guardian who originally executed such surrender. This subdivision shall not bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of a surrender.

For the purposes of this subdivision, no child shall be deemed to have been placed in the home of adoptive parents unless the fact of such placement, the date thereof, the date of the agreement pertaining thereto and the names and addresses of the adoptive parents shall have been recorded in a bound volume maintained by the agency for the purpose of recording such information in chronological order.

Where the parties have agreed that the surrender shall be subject to

conditions pursuant to subdivision two of this section and where there has been a substantial failure of a material condition prior to the finalization of the adoption of the child, the agency shall notify the parent thereof, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, and shall notify the court and the law guardian for the child within twenty days of such failure. In any such case, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure, except for good cause shown, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such a filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after notification of the failure. Such a petition filed by a parent or law guardian must be filed prior to the adoption. Nothing in this paragraph shall limit the rights and remedies available to the parties and the law guardian pursuant to section one hundred twelve-b of the domestic relations law with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of a child.

6. In an action or proceeding to determine the custody of a child not in foster care surrendered for adoption and placed in an adoptive home or to revoke or annul a surrender instrument in the case of such child placed in an adoptive home, the parent or parents who surrendered such child shall have no right to the custody of such child superior to that of the adoptive parents, notwithstanding that the parent or parents who surrendered the child are fit, competent and able to duly maintain, support and educate the child. The custody of such child shall be awarded solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular custodial disposition.

7. Upon acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to this section, the court shall

schedule an initial freed child permanency hearing pursuant to section one thousand eighty-nine of the family court act.

8. Upon execution of a surrender instrument, the parent executing the surrender shall provide information to the extent known regarding the other parent, any person to whom the surrendering parent had been married at the time of the conception or birth of the child and any other person listed in subdivision two of section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this subdivision shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the surrender.

9. Acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to this section shall not be construed to terminate any rights of the child to contact his or her siblings. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half siblings but for the surrender, termination of parental rights or death of a parent.

§ 384-a. Transfer of care and custody of children. 1. Method. The care and custody of a child may be transferred by a parent or guardian, and the care of a child may be transferred by any person to whom a parent has entrusted the care of the child, to an authorized agency by a written instrument in accordance with the provisions of this section. Such transfer by a person who is not the child's parent or guardian shall not affect the rights or obligations of the parents or guardian, and such transfer shall be deemed a transfer of the care and custody of the child for the purposes of section three hundred fifty-eight-a of this chapter.

1-a. Prior to accepting a transfer of care and custody, a local social services official shall commence a search to locate any non-respondent

parent of the child and shall conduct an immediate investigation to (a) locate relatives of the child, including all of the child's grandparents, all suitable relatives identified by either and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life, and to inform them of the opportunity for becoming foster parents or for seeking custody or care of the child, and that the child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are unsuccessful; and to determine whether the child may appropriately be placed with a suitable person related to the child and whether such relative seeks approval as a foster parent pursuant to this chapter for the purposes of providing care for such child, or wishes to provide care and custody for the child until the parent or other person responsible for the care of the child is able to resume custody; and (b) identify minor siblings or half-siblings of the child and to determine whether such siblings or half-siblings have been or are being transferred to the care and custody of such official. Such official shall provide or arrange for the provision of care so as to permit the child and his or her minor siblings or half-siblings to be placed together unless, in the judgment of such official, such placement would be contrary to the best interests of the children; whereupon, such official shall provide or arrange for regular visitation and other forms of regular communication between such children unless, in the judgment of such official, such visitation and communication would be contrary to the best interests of such children. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's best interests unless such placement or visitation and communication would be contrary to the child's health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

1-b. Upon accepting the transfer of care and custody of a child from the parent, guardian or other person to whom care of the child has been entrusted, a local social services official shall obtain information to the extent known from such person regarding the other parent, any person to whom the parent transferring care and custody had been married at the time of the conception or birth of the child, any person who would be

entitled to consent to the adoption of the child pursuant to subdivision one of section one hundred eleven of the domestic relations law, and any other person listed in subdivision two of section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this subdivision shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the transfer of care and custody.

2. Terms. (a) The instrument shall be upon such terms, for such time and subject to such conditions as may be agreed upon by the parties thereto. The office of children and family services may promulgate suggested terms and conditions for inclusion in such instruments, but shall not require that any particular terms and conditions be included. If the instrument provides that the child is to be returned by the authorized agency on a date certain or upon the occurrence of an identifiable event, such agency shall return such child at such time unless such action would be contrary to court order entered at any time prior to such date or event or within ten days thereafter pursuant to section three hundred eighty-four-b of this title or article six, ten, or ten-A of the family court act or unless and so long as the parent or guardian is unavailable or incapacitated to receive the child. The parent or guardian may, upon written notice to such agency, request return of the child at any time prior to the identified date or event, whereupon such agency may, without court order, return the child or, within ten days after such request, may notify the parent or guardian that such request is denied. If such agency denies or fails to act upon such request, the parent or guardian may seek return of the care and custody of the child by motion in family court for return of such child and order to show cause, or by writ of habeas corpus in the supreme court or family court. If the instrument fails to specify a date or identifiable event upon which such agency shall return such child, such agency shall return the child within twenty days after having received notice that the parent or guardian wishes the child returned, unless

such action would be contrary to court order entered at any time prior to the expiration of such twenty day period pursuant to section three hundred eighty-four-b of this title or article six, ten, or ten-A of the family court act. Expenditures by a local social services district for the care and maintenance of a child who has been continued in the care of an authorized agency in violation of the provisions of this subdivision shall not be subject to state reimbursement.

(b) No provisions set forth in any such instrument regarding the right of the parent or guardian to visit the child or to have services provided to the child and to the parent or guardian to strengthen the parental relationship may be terminated or limited by the authorized agency having the care and custody of the child unless: (i) the instrument shall have been amended to so limit or terminate such right, pursuant to subdivision three of this section; or (ii) the right of visitation or to such services would be contrary to or inconsistent with a court order obtained in any proceeding in which the parent or guardian was a party.

(c) The instrument shall state, in lay terms, in conspicuous print of at least eighteen point type:

(i) that the parent or guardian has the right, prior to signing the instrument transferring the care and custody of the child to an authorized agency, to legal representation of the parent's own choosing. The agency shall provide the parent or guardian with a list of attorneys or legal services organizations, if any, which provide free legal services to persons unable to otherwise obtain such services;

(ii) that the parent or guardian has no legal obligation to transfer the care and custody of the child to such official, and will incur no legal sanction for failing to do so;

(iii) that the law permits the instrument to specify a date certain or an identifiable event upon which the child is to be returned, and if no date or event is specified, that the parent or guardian has a right to the return of the child within twenty days of a request for return, unless otherwise ordered by the court; and to otherwise have the child returned in accordance with the terms of the instrument and the provisions of this section;

(iv) that the parent or guardian has a right to supportive services, which shall include preventive and other supportive services authorized

to be provided pursuant to the state's consolidated services plan, to visit the child, and to determine jointly with the agency the terms and frequency of visitation;

(v) that the parent or guardian, subject to the terms of the instrument, has an obligation

(A) to visit the child,

(B) to plan for the future of the child,

(C) to meet with and consult with the agency about such plan,

(D) to contribute to the support of the child to the extent of his or her financial ability to do so, and

(E) to inform the agency of any change of name and address;

(vi) that the failure of the parent or guardian to meet the obligations listed in subparagraph (v) could be the basis for a court proceeding for the commitment of the guardianship and custody of the child to an authorized agency thereby terminating parental rights;

(vii) that the parent or guardian has a right to a fair hearing pursuant to section twenty-two of this chapter concerning the agency's failure to permit the parent or guardian to visit the child or to provide supportive services, which shall include preventive and other supportive services authorized to be provided pursuant to the state's consolidated services plan, to the child and to the parent or guardian;

(viii) the amount of money which the parent will periodically contribute to the support of the child and the schedule for such payments, if known.

(ix) that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights.

(d) In any case where a parent who has transferred care and custody of a child to a social services official pursuant to this section informs the social services official that an order or judgment conferring visitation rights relating to the child has been entered by the family court or supreme court or that a written agreement as described in section two hundred thirty-six of the domestic relations law between the parents confers such rights, any instrument executed pursuant to this section shall incorporate the provisions of such order, judgment or agreement to the extent that visitation rights are affected and shall provide for visitation or other rights as required by such order,

judgment or agreement. Such incorporation shall not preclude a social services official from exercising his authority pursuant to paragraph (e) or (f) of this subdivision.

(e) Where a social services official opposes incorporation of an order, judgment or agreement described in paragraph (d) of this subdivision, such official may, upon execution of the instrument described in this section and upon notice to the non-custodial parent or grandparent named in such order, judgment or agreement, be heard thereon in a proceeding pursuant to section three hundred fifty-eight-a of this chapter.

(f) Nothing in this section shall be deemed to prohibit a social services official or an attorney for the child, if any, from making an application to modify the terms of a visitation order, incorporated pursuant to this section, for good cause shown, upon notice to all interested parties, or to limit the right of a non-custodial parent or grandparent to seek visitation pursuant to applicable provisions of law.

(g) In the event a child whose care and custody is transferred pursuant to this section is admitted to a hospital operated or licensed by the office of mental health and cannot be returned to the physical custody of his or her parent or guardian upon request because, pursuant to section four hundred of this chapter, the medical director of the facility has not authorized the removal of the child, the child shall nonetheless be deemed to have been returned to the legal care and custody of his or her parent or guardian. Expenditures by a social services district for the care and maintenance of such a child shall be subject to state reimbursement notwithstanding the provisions of section one hundred fifty-three-b of this chapter.

(h) (i) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following review by such official because the custodial parent or legal guardian of such child is suffering from a progressively chronic or irreversibly fatal illness and it is determined that there is neither a relative nor a close friend identified by the custodial parent or the legal guardian able to assume legal guardianship of the child, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to

an authorized agency by a written instrument in accordance with the provisions for this section which provides the transfer shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act.

(ii) Where a local social services official determines that a child is at significant risk of placement in the care and custody of the local commissioner of social services during the eighteen months immediately following a review of such official because the custodial parent or legal guardian is suffering from a progressively chronic or irreversibly fatal illness and there is a relative or close friend identified by the custodial parent or legal guardian who is able and willing to assume care and custody of the child, but who requires foster care services and financial support thereof pursuant to section three hundred ninety-eight-a of this article, the custodial parent or legal guardian shall be assisted by the local social services district in transferring the care and custody of the child to an authorized agency by a written instrument in accordance with the provisions of this section. Such instrument shall provide that the transfer of custody shall not take effect until the parent or legal guardian dies, becomes debilitated or incapacitated as defined in subdivision one of section seventeen hundred twenty-six of the surrogate's court procedure act. If otherwise qualified, the social services official shall assist the person identified to accept care and custody of the child to become certified as a foster parent.

(iii) A local social services official who accepts or proposes to accept the care and custody of a child by means of a written instrument executed pursuant to this paragraph, shall, pursuant to section three hundred fifty-eight-a of this chapter, petition the family court of the county or city in which the local social services official has his or her office to approve such written instrument. A written instrument executed pursuant to this paragraph and approved pursuant to section three hundred fifty-eight-a of this chapter shall be in effect until the court reviews the child's placement pursuant to article ten-A of the family court act. The status of a child subject to such an instrument shall be reviewed by the court pursuant to article ten-A of the family court act.

(iv) Upon receiving a notice from the custodial parent or the legal guardian that the parent or legal guardian is no longer debilitated or incapacitated and that the parent or legal guardian requests the immediate return of the child, the social services district shall return such child to the parent or legal guardian within ten days of receiving notice, except where a contrary court order has been issued pursuant to part two, five or seven of article ten of the family court act.

3. Amendment. (a) The parties to the instrument or anyone acting on their behalf with their consent may amend it by mutual consent but only by a supplemental instrument executed in the same manner as the original instrument. The supplemental instrument shall be attached to, and become part of, the original instrument. The supplemental instrument shall contain the recitation required in paragraph (c) of subdivision two of this section.

(b) The instrument shall also be deemed amended where ordered by the family court pursuant to the provisions of paragraph (d) of subdivision ten of section three hundred fifty-eight-a of this chapter.

4. Execution. The instrument shall be executed in the presence of one or more witnesses and shall include only the provisions, terms and conditions agreed upon by the parties thereto.

5. Records. The instrument shall be kept in a file maintained for that purpose by the agency accepting the care and custody of the child. A copy of the instrument shall be given to the parent or guardian at the time of the execution of the instrument.

6. An instrument executed pursuant to the provisions of this section shall not constitute a remand or commitment pursuant to this chapter.

§ 384-b. Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights.

1. Statement of legislative findings and intent.

(a) The legislature recognizes that the health and safety of children is of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further hereby finds that:

(i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;

(ii) it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;

(iii) the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and

(iv) when it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

(b) The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. The legislature further finds that provision of a timely procedure for the termination, in appropriate cases, of the rights of the birth parents could reduce such unnecessary stays.

It is the intent of the legislature in enacting this section to provide procedures not only assuring that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.

2. For the purposes of this section, (a) "child" shall mean a person

under the age of eighteen years; and, (b) "parent" shall include an incarcerated parent unless otherwise qualified.

3. (a) The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to section one thousand eighty-nine of the family court act to institute a proceeding under this section, or to a relative with care and custody of the child, by order of a surrogate or judge of the family court, as hereinafter provided. Where such guardianship and custody is committed to a foster parent or to a relative with care and custody of the child, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order, if the foster parent or relative fails to institute a proceeding for the adoption of the child within six months after the entry of the order committing the guardianship and custody of the child to such foster parent or relative. Where the foster parent or relative institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent or relative shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent or relative, it shall commit the guardianship and custody of the child to an authorized agency.

(b) A proceeding under this section may be originated by an authorized agency or by a foster parent authorized to do so pursuant to section one thousand eighty-nine of the family court act or by a relative with care and custody of the child or, if an authorized agency ordered by the court to originate a proceeding under this section fails to do so within the time fixed by the court, by the child's attorney or guardian ad litem on the court's direction.

(c) Where a child was placed or continued in foster care pursuant to article ten, ten-A or ten-C of the family court act or section three hundred fifty-eight-a of this chapter, a proceeding under this section shall be originated in the family court in the county in which the proceeding pursuant to article ten, ten-A or ten-C of the family court act or section three hundred fifty-eight-a of this chapter was last

heard and shall be assigned, wherever practicable, to the judge who last heard such proceeding. Where multiple proceedings are commenced under this section concerning a child and one or more siblings or half-siblings of such child, placed or continued in foster care with the same commissioner pursuant to section one thousand fifty-five, one thousand eighty-nine or one thousand ninety-five of the family court act, all of such proceedings may be commenced jointly in the family court in any county which last heard a proceeding under article ten, ten-A or ten-C of the family court act regarding any of the children who are the subjects of the proceedings under this section. In such instances, the case shall be assigned, wherever practicable, to the judge who last presided over such proceeding. In any other case, a proceeding under this section, including a proceeding brought in the surrogate's court, shall be originated in the county where either of the parents of the child reside at the time of the filing of the petition, if known, or, if such residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child resides at the time of the initiation of the proceeding. To the extent possible, the court shall, when appointing an attorney for the child, appoint an attorney who has previously represented the child.

(c-1) Before hearing a petition under this section, the court in which the termination of parental rights petition has been filed shall ascertain whether the child is under the jurisdiction of a family court pursuant to a placement in a child protective or foster care proceeding or continuation in out-of-home care pursuant to a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If the court determines that the child is under the jurisdiction of a different family court, the court in which the termination of parental rights petition was filed shall stay its proceeding for not more than thirty days and shall communicate with the court that exercised jurisdiction over the most recent proceeding. The communication shall be recorded or summarized on the record by the court in which the termination of parental rights petition was filed. Both courts shall notify the parties and child's attorney, if any, in their respective proceedings and shall give them an opportunity to present facts and legal argument or to participate in the communication prior to

the issuance of a decision on jurisdiction. The court that exercised jurisdiction over the most recent proceeding shall determine whether it will accept or decline jurisdiction over the termination of parental rights petition. This determination of jurisdiction shall be incorporated into an order regarding jurisdiction that shall be issued by the court in which the termination of parental rights petition was filed within thirty days of such filing. If the court that exercised jurisdiction over the most recent proceeding determines that it should exercise jurisdiction over the termination of parental rights petition, the order shall require that the petition shall be transferred to that court forthwith but in no event more than thirty-five days after the filing of the petition. The petition shall be assigned, wherever practicable, to the judge who heard the most recent proceeding. If the court that exercised jurisdiction over the most recent proceeding declines to exercise jurisdiction over the adoption petition, the court in which the termination of parental rights petition was filed shall issue an order incorporating that determination and shall proceed forthwith.

(d) The family court shall have exclusive, original jurisdiction over any proceeding brought upon grounds specified in paragraph (c), (d) or (e) of subdivision four of this section, and the family court and surrogate's court shall have concurrent, original jurisdiction over any proceeding brought upon grounds specified in paragraph (a) or (b) of subdivision four of this section, except as provided in paragraphs (c) and (c-1) of this subdivision.

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents, the attorney for the child's parent or parents and upon such other persons as the court may in its discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to have counsel assigned by the court in any case where they are financially unable to obtain counsel. When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of section

six hundred seventeen of the family court act, and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of section three hundred seven of the surrogate's court procedure act. When the proceeding is initiated on the grounds of abandonment of a child less than one year of age at the time of the transfer of the care and custody of such child to a local social services official, the court shall take judicial notice of efforts to locate the child's parents or other known relatives or other persons legally responsible pursuant to paragraph (ii) of subdivision (b) of section one thousand fifty-five of the family court act.

(f) In any proceeding under this section in which the surrogate's court has exercised jurisdiction, the provisions of the surrogate's court procedure act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to the extent that they do not conflict with the specific provisions of this section. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay. Any proceeding originated in family court upon the ground specified in paragraph (d) of subdivision four of this section shall be conducted in accordance with the provisions of part one of article six of the family court act.

(g) (i) An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon a finding that one or more of the grounds specified in subdivision four of this section are based upon clear and convincing proof.

(ii) Where a proceeding has been properly commenced under this section by the filing of a petition before the eighteenth birthday of a child, an order committing the guardianship and custody of a child pursuant to this section upon a finding under subdivision four of this section shall be granted after the eighteenth birthday of a child where the child

consents to such disposition.

(h) In any proceeding brought upon a ground set forth in paragraph (c) of subdivision four, neither the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, nor the physician-patient and related privileges, as set forth in section forty-five hundred four of the civil practice law and rules, nor the psychologist-client privilege, as set forth in section forty-five hundred seven of the civil practice law and rules, nor the social worker-client privilege, as set forth in section forty-five hundred eight of the civil practice law and rules, shall be a ground for excluding evidence which otherwise would be admissible.

(i) In a proceeding instituted by an authorized agency pursuant to the provisions of this section, proof of the likelihood that the child will be placed for adoption shall not be required in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child to an authorized agency.

(j) The order and the papers upon which it was granted in a proceeding under this section shall be filed in the court, and a certified copy of such order shall also be filed in the office of the county clerk of the county in which such court is located, there to be recorded and to be inspected or examined in the same manner as a surrender instrument, pursuant to the provisions of section three hundred eighty-four of this chapter.

(k) Where the child is over fourteen years of age, the court may, in its discretion, consider the wishes of the child in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child.

(l) (i) Notwithstanding any other law to the contrary, whenever: the child shall have been in foster care for fifteen months of the most recent twenty-two months; or a court of competent jurisdiction has determined the child to be an abandoned child; or the parent has been convicted of a crime as set forth in subdivision eight of this section, the authorized agency having care of the child shall file a petition pursuant to this section unless based on a case by case determination: (A) the child is being cared for by a relative or relatives; or (B) the agency has documented in the most recent case plan, a copy of which has

been made available to the court, a compelling reason for determining that the filing of a petition would not be in the best interest of the child; or (C) the agency has not provided to the parent or parents of the child such services as it deems necessary for the safe return of the child to the parent or parents, unless such services are not legally required; or (D) the parent or parents are incarcerated, in immigration detention or immigration removal proceedings, or participating in a residential substance abuse treatment program, or the prior incarceration, immigration detention or immigration removal proceedings, or participation of a parent or parents in a residential substance abuse treatment program is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, provided that the parent maintains a meaningful role in the child's life based on the criteria set forth in subparagraph (v) of this paragraph and the agency has not documented a reason why it would otherwise be appropriate to file a petition pursuant to this section.

(ii) For the purposes of this section, a compelling reason whereby a social services official is not required to file a petition for termination of parental rights in accordance with subparagraph (i) of this paragraph includes, but is not limited to, where:

(A) the child was placed into foster care pursuant to article three or seven of the family court act and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is either (1) return to his or her parent or guardian or (2) discharge to independent living;

(B) the child has a permanency goal other than adoption;

(C) the child is fourteen years of age or older and will not consent to his or her adoption;

(D) there are insufficient grounds for filing a petition to terminate parental rights; or

(E) the child is the subject of a pending disposition under article ten of the family court act, except where such child is already in the custody of the commissioner of social services as a result of a proceeding other than the pending article ten proceeding, and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is discharge to his or her parent or guardian.

(iii) For the purposes of this paragraph, the date of the child's entry into foster care is the earlier of sixty days after the date on which the child was removed from the home or the date the child was found by a court to be an abused or neglected child pursuant to article ten of the family court act.

(iv) In the event that the social services official or authorized agency having care and custody of the child fails to file a petition to terminate parental rights within sixty days of the time required by this section, or within ninety days of a court direction to file a proceeding not otherwise required by this section, such proceeding may be filed by the foster parent of the child without further court order or by the attorney for the child on the direction of the court. In the event of such filing the social services official or authorized agency having care and custody of the child shall be served with notice of the proceeding and shall join the petition.

(v) For the purposes of clause (D) of subparagraph (i) of this paragraph, an assessment of whether a parent maintains a meaningful role in his or her child's life shall be based on evidence, which may include the following: a parent's expressions or acts manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child; efforts by the parent to communicate and work with the authorized agency, attorney for the child, foster parent, the court, and the parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel for the purpose of complying with the service plan and repairing, maintaining or building the parent-child relationship; a positive response by the parent to the authorized agency's diligent efforts as defined in paragraph (f) of subdivision seven of this section; and whether the continued involvement of the parent in the child's life is in the child's best interest. In assessing whether a parent maintains a meaningful role in his or her child's life, the authorized agency shall gather input from individuals and agencies in a reasonable position to help make this assessment, including but not limited to, the authorized agency, attorney for the child, parent, child, foster parent or other individuals of importance in the child's life, and parent's attorney or other individuals providing services to the parent, including correctional, mental health

and substance abuse treatment program personnel. The court may make an order directing the authorized agency to undertake further steps to aid in completing its assessment.

4. An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds:

(a) Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or

(b) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, abandoned such child for the period of six months immediately prior to the date on which the petition is filed in the court; or

(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or intellectual disability, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or

(d) The child is a permanently neglected child; or

(e) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, severely or repeatedly abused such child. Where a court has determined that reasonable efforts to reunite the child with his or her parent are not required, pursuant to the family court act or this chapter, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of subdivision eight of this section may be filed immediately upon such determination.

5. (a) For the purposes of this section, a child is "abandoned" by his parent if such parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so

and not prevented or discouraged from doing so by the agency. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.

(b) The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child. In making such determination, the court shall not require a showing of diligent efforts, if any, by an authorized agency to encourage the parent to perform the acts specified in paragraph (a) of this subdivision.

6. (a) For the purposes of this section, "mental illness" means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(b) For the purposes of this section, "intellectual disability" means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act; provided, however, that case law regarding use of the phrase "mental retardation" under this section shall be applicable to the term "intellectual disability".

(c) The legal sufficiency of the proof in a proceeding upon the ground set forth in paragraph (c) of subdivision four of this section shall not be determined until the judge has taken the testimony of a psychologist, or psychiatrist, in accordance with paragraph (e) of this subdivision.

(d) A determination or order upon a ground set forth in paragraph (c) of subdivision four shall in no way affect any other right, or constitute an adjudication of the legal status of the parent.

(e) In every proceeding upon a ground set forth in paragraph (c) of subdivision four the judge shall order the parent to be examined by, and shall take the testimony of, a qualified psychiatrist or a psychologist licensed pursuant to article one hundred fifty-three of the education law as defined in section 730.10 of the criminal procedure law in the

case of a parent alleged to be mentally ill or retarded, such psychologist or psychiatrist to be appointed by the court pursuant to section thirty-five of the judiciary law. The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or if the parent renders himself unavailable therefor whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself therein, the appointed psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided that such other information affords a reasonable basis for his opinion.

7. (a) For the purposes of this section, "permanently neglected child" shall mean a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of either at least one year or fifteen out of the most recent twenty-two months following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child. The court shall consider the special circumstances of an incarcerated parent or parents, or of a parent or parents participating in a residential substance abuse treatment program, when determining whether a child is a "permanently neglected child" as defined in this paragraph. In such cases, the court also shall consider the particular constraints, including but not limited to, limitations placed on family contact and the unavailability of social or rehabilitative services to aid in the development of a meaningful relationship between the parent and his or her child, that may impact the parent's ability to substantially and continuously or repeatedly maintain contact with his or her child and to plan for the future of his or her child as defined in paragraph (c) of this subdivision. Where a court has previously determined in accordance with paragraph (b) of subdivision three of section three hundred

fifty-eight-a of this chapter or section one thousand thirty-nine-b, subparagraph (A) of paragraph (i) of subdivision (b) of section one thousand fifty-two, paragraph (b) of subdivision two of section seven hundred fifty-four or paragraph (c) of subdivision two of section 352.2 of the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as defined in this section. In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court.

(b) For the purposes of paragraph (a) of this subdivision, evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is of such character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact.

(c) As used in paragraph (a) of this subdivision, "to plan for the future of the child" shall mean to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent.

(d) For the purposes of this subdivision:

(i) A parent shall not be deemed unable to maintain contact with or plan for the future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor; and

(ii) The time during which a parent is actually hospitalized or institutionalized shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.

(e) Notwithstanding the provisions of paragraph (a) of this

subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when:

(i) The parent has failed for a period of six months to keep the agency apprised of his or her location, provided that the court may consider the particular delays or barriers an incarcerated parent or parents, or a parent or parents participating in a residential substance abuse treatment program, may experience in keeping the agency apprised of his or her location; or

(ii) An incarcerated parent has failed on more than one occasion while incarcerated to cooperate with an authorized agency in its efforts to assist such parent to plan for the future of the child, as such phrase is defined in paragraph (c) of this subdivision, or in such agency's efforts to plan and arrange visits with the child as described in subparagraph five of paragraph (f) of this subdivision.

(f) As used in this subdivision, "diligent efforts" shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;

(2) making suitable arrangements for the parents to visit the child except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility shall not be required unless reasonably feasible and in the best interest of the child;

(3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated;

(4) informing the parents at appropriate intervals of the child's progress, development and health;

(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. When no visitation between child and incarcerated parent has been arranged for or permitted by the authorized agency because such visitation is determined not to be in the best interest of the child, then no permanent neglect proceeding under this

subdivision shall be initiated on the basis of the lack of such visitation. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility; and

(6) providing information which the authorized agency shall obtain from the office of children and family services, outlining the legal rights and obligations of a parent who is incarcerated or in a residential substance abuse treatment program whose child is in custody of an authorized agency, and on social or rehabilitative services available in the community, including family visiting services, to aid in the development of a meaningful relationship between the parent and child. Wherever possible, such information shall include transitional and family support services located in the community to which an incarcerated parent or parent participating in a residential substance abuse treatment program shall return.

8. (a) For the purposes of this section a child is "severely abused" by his or her parent if (i) the child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child as defined in subdivision ten of section 10.00 of the penal law; or

(ii) the child has been found to be an abused child, as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law and, for the purposes

of this section the corroboration requirements contained in the penal law shall not apply to proceedings under this section; or

(iii) (A) the parent of such child has been convicted of murder in the first degree as defined in section 125.27, murder in the second degree as defined in section 125.25, manslaughter in the first degree as defined in section 125.20, or manslaughter in the second degree as defined in section 125.15, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act, or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the attempted homicide; (B) the parent of such child has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; (C) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or (D) the parent of such child has been convicted under the law in any

other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause (A), (B) or (C) of this subparagraph; and

(iv) the agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(b) For the purposes of this section a child is "repeatedly abused" by his or her parent if:

(i) the child has been found to be an abused child, (A) as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96 of the penal law; and

(ii) (A) the child or another child for whose care such parent is or has been legally responsible has been previously found, within the five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, in the case of a finding of abuse as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law, or (B) the parent has been convicted of a crime under section 130.25, 130.30, 130.35, former sections 130.40, 130.45,

130.50, sections 130.65, 130.67, 130.70, 130.75 or 130.80 of the penal law against the child, a sibling of the child or another child for whose care such parent is or has been legally responsible, within the five year period immediately preceding the initiation of the proceeding in which abuse is found; and

(iii) the agency has made diligent efforts, to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(c) Notwithstanding any other provision of law, the requirements of paragraph (g) of subdivision three of this section shall be satisfied if one of the findings of abuse pursuant to subparagraph (i) or (ii) of paragraph (b) of this subdivision is found to be based on clear and convincing evidence.

(d) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that the child was a severely abused child as defined in subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall establish that the child was a severely abused child in accordance with this section. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(e) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that a child was abused (A) as defined in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; or (B) as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act, as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in sections 130.25, 130.30, 130.35, former sections 130.40, 130.45, 130.50, sections

130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law shall establish that the child was an abused child for the purpose of a determination as required by subparagraph (i) or (ii) of paragraph (b) of this subdivision. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(f) Upon a finding pursuant to paragraph (a) or (b) of this subdivision that the child has been severely or repeatedly abused by his or her parent, the court shall enter an order of disposition either (i) committing the guardianship and custody of the child, pursuant to this section, or (ii) suspending judgment in accordance with section six hundred thirty-three of the family court act, upon a further finding, based on clear and convincing, competent, material and relevant evidence introduced in a dispositional hearing, that the best interests of the child require such commitment or suspension of judgment. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be completed pursuant to section one thousand eighty-nine of the family court act.

9. Nothing in this section shall be construed to terminate, upon commitment of the guardianship and custody of a child to an authorized agency or foster parent, any rights and benefits, including but not limited to rights relating to contact with siblings, inheritance, succession, social security, insurance and wrongful death action claims, possessed by or available to the child pursuant to any other provision of law. For purposes of this section, "siblings" shall include half-siblings and those who would be deemed siblings or half-siblings but for the termination of parental rights or death of a parent. Notwithstanding any other provision of law, a child committed to the custody and guardianship of an authorized agency pursuant to this section shall be deemed to continue in foster care until such time as an adoption or another planned permanent living arrangement is finalized. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be held pursuant to section one thousand eighty-nine of

the family court act.

10. Upon the court's order transferring custody and guardianship to the commissioner, the attorney for the petitioning authorized agency shall promptly serve upon the persons who have been approved by such agency as the child's adoptive parents, notice of entry of such order and advise such persons that an adoption proceeding may be commenced. In accordance with the regulations of the department, the authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

11. Upon the entry of an order committing the guardianship and custody of a child pursuant to this section, the court shall inquire whether any foster parent or parents with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency or disinterested person as such term is defined in subdivision three of section one hundred sixteen of the domestic relations law. The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.

13. A petition to modify a disposition of commitment of guardianship and custody in order to restore parental rights may be brought in accordance with part one-A of article six of the family court act where the conditions enumerated in section six hundred thirty-five of such part have been met.

§ 384-c. Notice in certain proceedings to fathers of children born out-of-wedlock. 1. Notwithstanding any inconsistent provision of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of

this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any proceeding initiated pursuant to sections three hundred fifty-eight-a and three hundred eighty-four of this title, involving a child born out-of-wedlock. Persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: (a) rape in first or second degree; (b) course of sexual conduct against a child in the first degree; (c) predatory sexual assault; or (d) predatory sexual assault against a child.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) any person adjudicated by a court in this state to be the father of the child;

(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of this chapter;

(c) any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of this chapter;

(d) any person who is recorded on the child's birth certificate as the child's father;

(e) any person who is openly living with the child and the child's mother at the time the proceeding is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;

(f) any person who has been identified as the child's father by the mother in written, sworn statement;

(g) any person who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b; and

(h) any person who has filed with the putative father registry an instrument acknowledging paternity of the child, pursuant to section 4-1.2 of the estates, powers and trusts law.

3. The provisions of this section shall not apply to persons entitled to notice pursuant to section one hundred eleven of the domestic relations law. The sole purpose of notice under this section shall be to enable the person served pursuant to subdivision two of this section to present evidence to the court relevant to the best interests of the child.

4. Notice under this section shall be given at least twenty days prior to the proceeding by delivery of a copy of the petition and notice to the person. Upon a showing to the court, by affidavit or otherwise, on or before the date of the proceeding or within such further time as the court may allow, that personal service cannot be effected at the person's last known address with reasonable effort, notice may be given, without prior court order therefor, at least twenty days prior to the proceeding by registered or certified mail directed to the person's last known address or, where the person has filed a notice of intent to claim paternity pursuant to section three hundred seventy-two-c, to the address last entered therein. Notice by publication shall not be required to be given to a person entitled to notice pursuant to the provisions of this section.

5. A person may waive his right to notice under this section by written instrument subscribed by him and acknowledged or proved in the manner required for the execution of a surrender instrument pursuant to section three hundred eighty-four of this chapter.

6. The notice given to persons pursuant to this section shall inform them of the time, date, place and purpose of the proceeding and shall also apprise such persons that their failure to appear shall constitute a denial of their interest in the child which denial may result, without further notice, in the transfer or commitment of the child's care, custody or guardianship or in the child's adoption in this or any subsequent proceeding in which such care, custody or guardianship or

adoption may be at issue.

7. No order of the court in any proceeding pursuant to section three hundred fifty-eight-a or three hundred eighty-four of this title or in any subsequent proceeding involving the child's custody, guardianship or adoption shall be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear, or who waived notice pursuant to subdivision five of this section. Nor shall any order of the court in any proceeding involving the child's custody, guardianship or adoption be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section in any previous proceeding in which the court determined that the transfer or commitment of the child's care, custody or guardianship to an authorized agency was in the child's best interests.

§ 385. Orders; prohibiting placing out or boarding out; removal. 1. Prohibiting placing out or boarding out. Whenever the commissioner shall decide that any disposition of a child under this title has been made for purposes of gain, or without due inquiry as to the character and reputation of the person with whom such child is placed, or in such manner that such child is subjected to cruel or improper treatment or neglect or immoral surroundings, or in such manner that the religious faith of the child is not preserved and protected as provided by this title, the commissioner may issue an order prohibiting such an authorized agency, association, corporation, institution, society or other organization from thereafter placing out or boarding out any child. No such order shall be issued until after an opportunity to be heard before the commissioner or his designee and after reasonable notice has been given, with a copy of the charge. A full record of the proceedings and decision on such hearing shall be kept by the department. Any such order issued by the commissioner may be revoked by the commissioner.

2. Whenever the commissioner shall find a minor

(a) placed out or boarded out in a home which is unsuitable or has no

license or certificate, or

(b) cared for under a certificate or license but neglected or without suitable care or protection, he may order its removal within thirty days by the agency which placed it and if such order cannot be served upon such agency, it may be addressed to the public board, commission, or officer of the county charged with the care of such child. If such child is not removed within the specified time, the matter may be brought before the children's court or other court having jurisdiction, for adjudication and disposition.

3. Review of orders. Any person, agency, association, corporation, institution, society or other organization, aggrieved by the decision of the commissioner in making any order pursuant to the provisions of this title, may institute, in the judicial district in which the applicant resides or has its chief office, a proceeding under article seventy-eight of the civil practice law and rules in which the reasonableness of such decision shall be subject to review.

§ 386. Visitation; inspection and supervision. 1. The board or the department is authorized to visit, in its discretion, any minor under the age of twenty-one years committed, placed out or boarded out and not legally adopted or in the custody of a legal guardian.

2. The board or the department is authorized to visit, in its discretion, any home or place where a child or children are received, boarded or kept under a license or certificate whether or not such children are maintained as public charges. Every licensed home shall, if practicable, be visited by the department at least four times in each year.

§ 387. * Ineligibility for public foster care funds; fiscal penalties.

* NB Effective until June 30, 2027

* Public foster care funds; ineligibility.

* NB Effective June 30, 2027

* 1. The office of children and family services shall, by regulation,

promulgate standards to determine that an authorized agency, or one or more of its programs or facilities, is ineligible to receive public foster care funds or should be assessed a fiscal penalty. Such standards shall include the following:

(a) lack of public need, including but not limited to geographic or programmatic need, for the agency or one or more of its programs or facilities;

(b) failure of the agency to promote the placement of children in permanent, safe family homes through return to the children's own families or through adoption, or other appropriate objectives for children, as measured by such factors as length of stay in foster care for children with similar personal and family characteristics; and

(c) a pattern or practice of repeated violation of the provisions of this chapter or of the regulations of the office of children and family services promulgated thereunder.

* NB Effective until June 30, 2027

* 1. The department shall, by regulation, promulgate standards to determine that an authorized agency, or one or more of its programs or facilities, is ineligible to receive public foster care funds. Such standards shall include the following:

(a) lack of public need, including but not limited to geographic or programmatic need, for the agency or one or more of its programs or facilities;

(b) failure of the agency to promote the placement of children in permanent family homes through return to the children's own families or through adoption, or other appropriate objectives for children, as measured by such factors as length of stay in foster care for children with similar personal and family characteristics; and

(c) a pattern or practice of repeated violation of the provisions of this chapter or of the regulations of the department promulgated thereunder which have occasioned the denial of reimbursement pursuant to section one hundred fifty-three-d or three hundred ninety-eight-b of this chapter.

Such standards shall be developed with the participation of the child welfare standards advisory council established pursuant to section four hundred nine-h of this chapter and in consultation with public and

voluntary authorized agencies, citizens' groups and concerned individuals and organizations including the state council on children and families.

* NB Effective June 30, 2027

* 2. A determination of ineligibility to receive public foster care funds or the assessment of a fiscal penalty shall be made upon a finding of substantial noncompliance with one or more of the standards developed and adopted pursuant to subdivision one of this section. Such findings and determination shall be made in accordance with the hearing procedures set forth in section four hundred sixty-d of this chapter relating to the revocation, suspension or limiting of operating certificates. Such determination shall be subject to judicial review in accordance with article seventy-eight of the civil practice law and rules.

* NB Effective until June 30, 2027

* 2. A determination of ineligibility to receive public foster care funds shall be made upon a finding of substantial noncompliance with one or more of the standards developed and adopted pursuant to subdivision one of this section. Such findings and determination shall be made in accordance with the hearing procedures set forth in section four hundred sixty-d of this chapter relating to the revocation, suspension or limiting of operating certificates. Such determination shall be subject to judicial review in accordance with article seventy-eight of the civil practice law and rules.

* NB Effective June 30, 2027

3. A determination of ineligibility to receive public foster care funds shall specify whether it applies to the agency generally or to a particular program or facility of the agency.

4. A social services official shall not purchase foster care from any authorized agency, or program or facility thereof, which has been determined to be ineligible to receive public foster care funds in accordance with the provisions of this section. Any contract between a social services district and an authorized agency shall be deemed null and void to the extent that it is inconsistent with the provisions of this subdivision.

5. The commissioner shall report forthwith in writing, to the governor, the temporary president of the senate and the speaker of the assembly with respect to each case in which a determination of ineligibility to receive public foster care funds has been made pursuant to this section. Such report shall contain the name of the agency and the reason or reasons for the determination of ineligibility.

* 6. Any fiscal penalty received by the office of children and family services pursuant to this section shall be deposited to the credit of the children and family services quality enhancement fund established pursuant to section ninety-seven-yyy of the state finance law.

* NB Repealed June 30, 2027

§ 388. Special charters. The power and authority given to agencies, associations, corporations, institutions and societies in their charters shall not be abrogated or nullified, except as the same are in conflict with this title.

§ 389. Penalty for violations. 1. Except as hereinafter provided, any person, corporation, agency, society, institution or other organization, wilfully violating this title, other than section three hundred ninety-g of this title, or failing to comply with any order which the department is authorized under this title to make, shall be guilty of a misdemeanor.

2. (a) Any person, corporation, society, institution or other organization who or which violates the provisions of subdivision six of section three hundred seventy-four of this chapter shall be guilty of a misdemeanor, for the first such offense. Any person, corporation, society, institution or other organization who or which violates the provisions of subdivision six of section three hundred seventy-four of this chapter, after having been once convicted of violating such provisions, shall be guilty of a felony.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, any person, corporation, society, institution or other

organization who or which violates subdivision six of section three hundred seventy-four of this title, where such unlawful compensation or thing of value accepted or received exceeds five thousand dollars in value, shall be guilty of a class E felony as defined in the penal law. Any person, corporation, society, institution, or other organization who or which violates subdivision six of section three hundred seventy-four of this title, where such unlawful compensation or thing of value accepted or received exceeds five thousand dollars in value, after having been previously convicted of violating subdivision six of section three hundred seventy-four of this title, shall be guilty of a class D felony as defined in the penal law.

§ 390. Child day care; license or registration required. 1.

Definitions. (a) (i) "Child day care" shall mean child care where a license or registration pursuant to this section is required and shall include care for a child on a regular basis provided away from the child's residence for less than twenty-four hours per day by someone other than: (1) the parent, step-parent, guardian, or relative within the third degree of consanguinity of the parents or step-parents of such child; or (2) an enrolled legally-exempt provider as such term is defined in paragraph (g) of this subdivision.

(ii) Child day care shall not refer to care provided in:

(A) a day camp, as defined in the state sanitary code;

(B) an after-school program operated for the purpose of religious education, sports, or recreation;

(C) a facility:

(1) providing day services under an operating certificate issued by the department;

(2) providing day treatment under an operating certificate issued by the office of mental health or the office for people with developmental disabilities; or

(D) a kindergarten, pre-kindergarten, or nursery school for children three years of age or older, or after-school program for children operated by a public school district or by a private school or academy which is providing elementary or secondary education or both, in accordance with the compulsory education requirements of the education

law, provided that the kindergarten, pre-kindergarten, nursery school, or after school program is located on the premises or campus where the elementary or secondary education is provided. Provided however, a kindergarten or a pre-kindergarten operated by a public school district shall not be considered a child day care if the kindergarten or pre-kindergarten is not located on the premises or campus where the elementary or secondary education is provided.

(b) "Child day care provider" shall mean any individual, association, corporation, partnership, institution or agency whose activities include providing child day care or operating a home or facility where child day care is provided.

(c) "Child day care center" shall mean any program or facility caring for children for more than three hours per day per child in which child day care is provided by a child day care provider except those programs operating as a group family day care home as such term is defined in paragraph (d) of this subdivision, a family day care home, as such term is defined in paragraph (e) of this subdivision, and a school-age child care program, as such term is defined in paragraph (f) of this subdivision.

(d) "Group family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for seven to twelve children of all ages, except for those programs operating as a family day care home, as such term is defined in paragraph (e) of this subdivision, which care for seven or eight children. A group family day care provider may provide child day care services to four additional children if such additional children are of school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. There shall be one caregiver for every two children under two years of age in the group family home. A group family day care home must have at least one assistant to the operator present when child day care is being provided to seven or more children when none of the children are school age, or nine or more children when at least two of the children are school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or

school holidays, or during those periods of the year in which school is not in session. This assistant shall be selected by the group family day care operator and shall meet the qualifications established for such position by the regulations of the office of children and family services.

(e) "Family day care home" shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for three to six children. There shall be one caregiver for every two children under two years of age in the family day care home. A family day care provider may, however, care for seven or eight children at any one time if no more than six of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the office of children and family services and the office inspects such home to determine whether the provider can care adequately for seven or eight children.

(f) "School age child care" shall mean a program caring for more than six school-aged children who are under thirteen years of age or who are incapable of caring for themselves. Such programs shall be in operation consistent with the local school calendar. School age child care programs shall offer care during the school year to an enrolled group of children at a permanent site before or after the period children enrolled in such program are ordinarily in school or during school lunch periods and may also provide such care on school holidays and those periods of the year in which school is not in session.

(g) "Enrolled legally exempt provider" shall mean a person who is a caregiver or entity that is not required to be licensed or registered pursuant to this section and that is enrolled to be a caregiver and provide subsidized child care services to eligible families in accordance with title five-C of this article and the regulations of the office of children and family services.

2. * (a) Child day care centers caring for seven or more children and group family day care programs, as defined in subdivision one of this section, shall obtain a license from the office of children and family

services and shall operate in accordance with the terms of such license and the regulations of such office. Initial licenses and subsequent licenses shall be valid for a period of up to four years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

* NB Effective until June 5, 2027

* (a) Child day care centers caring for seven or more children and group family day care programs, as defined in subdivision one of this section, shall obtain a license from the office of children and family services and shall operate in accordance with the terms of such license and the regulations of such office. Initial licenses and subsequent licenses shall be valid for a period of up to six years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

* NB Effective June 5, 2027

(b) Family day care homes, child day care centers caring for at least three but fewer than seven children, and school-age child care programs shall register with the department and shall operate in compliance with the regulations of the department.

(c) Any child day care provider not required to obtain a license pursuant to paragraph (a) of this subdivision or to register with the department pursuant to paragraph (b) of this subdivision may register with the department.

(d) (i) The office of children and family services shall promulgate regulations for licensure and for registration of child day care pursuant to this section. Procedures for obtaining a license or registration or renewing a license shall include a satisfactory inspection of the facility by the office of children and family services prior to issuance of the license or registration or renewal of the license.

(ii) * (A) Initial registrations and subsequent registrations shall be valid for a period of up to four years so long as the provider remains substantially in compliance with applicable law and regulations during such period.

* NB Effective until June 5, 2027

* (A) Initial registrations and subsequent registrations shall be valid for a period of up to six years so long as the provider remains

substantially in compliance with applicable law and regulations during such period.

* NB Effective June 5, 2027

(B) After initial registration by the child day care provider, the office of children and family services shall not accept any subsequent registration by such provider, unless:

(1) such provider has met the training requirements set forth in section three hundred ninety-a of this title;

(2) such provider has met the requirements of section three hundred ninety-b of this title relating to criminal history screening;

(3) such provider has complied with the requirements of section four hundred twenty-four-a of this article; and

(4) the office of children and family services has received no complaints about the home, center, or program alleging statutory or regulatory violations, or, having received such complaints, the office of children and family services has determined, after inspection pursuant to paragraph (a) of subdivision three of this section, that the home, center, or program is operated in compliance with applicable statutory and regulatory requirements.

(C) Where the office of children and family services has determined that a registration should not be continued because the requirements of clause (B) of this subparagraph have not been satisfied, the office of children and family services may terminate the registration. If the office of children and family services does not terminate the registration, the office of children and family services shall inspect the home or program before acknowledging any subsequent registration. Where the home or program has failed to meet the requirements of this section, the office of children and family services may reject any subsequent registration of a provider. Nothing herein shall prohibit the office of children and family services from terminating or suspending registration pursuant to subdivision ten of this section where the office of children and family services determines that termination or suspension is necessary.

(iv) Child day care providers who have been issued a license shall openly display such license in the facility or home for which the license is issued. Child day care providers who have registered with the department shall provide proof of registration upon request.

(d-1) (i) The office of children and family services shall promulgate regulations for inspections of enrolled legally exempt providers, which shall include the completion of a satisfactory inspection of the premises where care is to be provided, by the office of children and family services.

(ii) Provided however, unless a complaint is made in or as otherwise authorized such inspections shall not be required when the enrolled legally exempt provider is an individual, age eighteen or older, and who, by virtue of blood, marriage or court decree, is, to all of the children that such person is enrolled to provide subsidized child care services to in accordance with title five-C of this article:

(A) a grandparent;

(B) a great-grandparent;

(C) a sibling, provided that such sibling resides in a separate household from the child;

(D) an aunt; or

(E) an uncle.

(e) Notwithstanding any other provision of this section, where a child is cared for by a parent, guardian or relative within the third degree of consanguinity of the parent of such child and such person simultaneously provides child day care for other children, only the other children shall be considered in determining whether such person must be registered or licensed, provided that such person is not caring, in total, for more than eight children.

2-a. (a) The office of children and family services shall promulgate regulations which establish minimum quality program requirements for licensed and registered child day care homes, programs and facilities. Such requirements shall include but not be limited to (i) the need for age appropriate activities, materials and equipment to promote cognitive, educational, social, cultural, physical, emotional, language and recreational development of children in care in a safe, healthy and caring environment (ii) principles of childhood development (iii) appropriate staff/child ratios for family day care homes, group family day care homes, school age day care programs and day care centers (iv) appropriate levels of supervision of children in care (v) minimum standards for sanitation, health, infection control, nutrition,

buildings and equipment, safety, security procedures, first aid, fire prevention, fire safety, evacuation plans and drills, prevention of child abuse and maltreatment, staff qualifications and training, record keeping, and child behavior management.

(b) The use of electronic monitors as a sole means of supervision of children in day care shall be prohibited, except that electronic monitors may be used in family day care homes and group family day care homes as an indirect means of supervision where the parents of any child to be supervised have agreed in advance to the use of such monitors as an indirect means of supervision and the use of such monitors is restricted to situations where the children so supervised are sleeping.

(c) No child less than six weeks of age may be cared for by a licensed or registered day care provider, except in extenuating circumstances where prior approval for care of such children has been given by the office of children and family services. Extenuating circumstances for the purposes of this section shall include but not be limited to the medical or health needs of the parent or child, or the economic hardship of the parent.

3. (a) The office of children and family services may make announced or unannounced inspections of the records and premises of any child care provider, whether or not such provider has a license from, or is registered with, the office of children and family services. The office of children and family services shall make unannounced inspections of the records and premises of any child day care provider within fifteen days after the office of children and family services receives a complaint that, if true, would indicate such provider does not comply with the applicable regulations of the office of children and family services or with statutory requirements. If the complaint indicates that there may be imminent danger to the children, the office of children and family services shall investigate the complaint no later than the next day of operation of the provider. The office of children and family services may provide for inspections through the purchase of services.

(b) (i) Where inspections have been made and violations of applicable statutes or regulations have been found, the office of children and family services shall within ten days advise the child day care provider in writing of the violations and require the provider to correct such

violations. The office of children and family services may also act pursuant to subdivisions ten and eleven of this section.

(ii) Where inspections have been made and violations of applicable statutes or regulations have been found, the office of children and family services or its designee shall, within ten days, advise the enrolled legally-exempt provider in writing of the violations and require the provider to correct such violations.

(c) (i) The office of children and family services shall establish a toll-free statewide telephone number to receive inquiries about child day care homes, programs and facilities and complaints of violations of the requirements of this section or regulations promulgated under this section. The office of children and family services shall develop a system for investigation, which shall include inspection, of such complaints. The office of children and family services may provide for such investigations through purchase of services. The office of children and family services shall develop a process for publicizing such toll-free telephone number to the public for making inquiries or complaints about child day care homes, programs or facilities.

(ii) Information to be maintained and available to the public through such toll-free telephone number shall include, but not be limited to:

(A) current license and registration status of child day care homes, programs and facilities including whether a license or registration is in effect or has been revoked or suspended; and

(B) child care resource and referral programs providing services pursuant to title five-B of this article and other resources known to the office of children and family services which relate to child day care homes, programs and facilities in the state.

(iii) Upon written request identifying a particular child day care home, program or facility, the office of children and family services shall provide the information set forth below. The office of children and family services may charge reasonable fees for copies of documents provided, consistent with the provisions of article six of the public officers law. The information available pursuant to this clause shall be:

(A) the results of the most recent inspection for licensure or registration and any subsequent inspections by the office of children and family services;

(B) complaints filed against child day care homes, programs or facilities which describes the nature of the complaint and states how the complaint was resolved, including the status of the office of children and family services investigation, the steps taken to rectify the complaint, and the penalty, if any, imposed; and

(C) child day care homes, programs or facilities which have requested or received a waiver from any applicable rule or regulation, and the regulatory requirement which was waived.

(iv) Nothing in this paragraph shall be construed to require or permit the disclosure either orally or in writing of any information that is confidential pursuant to law.

(d) Where investigation or inspection reveals that a child day care provider which must be licensed or registered is not, the office of children and family services shall advise the child day care provider in writing that the provider is in violation of the licensing or registration requirements and shall take such further action as is necessary to cause the provider to comply with the law, including directing an unlicensed or unregistered provider to cease operation. In addition, the office of children and family services shall require the provider to notify the parents or guardians of children receiving care from the provider that the provider is in violation of the licensing or registration requirements and shall require the provider to notify the office of children and family services that the provider has done so. Any provider who is directed to cease operations pursuant to this paragraph shall be entitled to a hearing before the office of children and family services. If the provider requests a hearing to contest the directive to cease operations, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. The provider may not operate the center, home or program after being directed to cease operations, regardless of whether a hearing is requested. If the provider does not cease operations, the office of children and family services may impose a civil penalty pursuant to subdivision eleven of this section, seek an injunction pursuant to section three hundred ninety-one of this title, or both.

(e) (i) Where an authorized agency is subsidizing child day care pursuant to any provision of this chapter, the authorized agency may

submit to the department justification for a need to impose additional requirements upon child day care providers and a plan to monitor compliance with such additional requirements. No such additional requirements or monitoring may be imposed without the written approval of the department.

(ii) An authorized agency may refuse to allow a child day care provider who is not in compliance with this section and regulations issued hereunder or any approved additional requirements of the authorized agency to provide child day care to the child. In accordance with the plan approved by the department, an authorized agency shall have the right to make announced or unannounced inspections of the records and premises of any provider who provides care for such children, including the right to make inspections prior to subsidized children receiving care in a home where the inspection is for the purpose of determining whether the child day care provider is in compliance with applicable law and regulations and any additional requirements imposed upon such provider by the authorized agency. Where an authorized agency makes such inspections, the authorized agency shall notify the department immediately of any violations of this section or regulations promulgated hereunder, and shall provide the department with an inspection report whether or not violations were found, documenting the results of such inspection.

(iii) Nothing contained in this paragraph shall diminish the authority of the department to conduct inspections or provide for inspections through purchase of services as otherwise provided for in this section. Nothing contained in this paragraph shall obligate the department to take any action to enforce any additional requirements imposed on child day care providers by an authorized agency.

(f) Individual local social services districts may alter their participation in activities related to arranging for, subsidizing, delivering and monitoring the provision of subsidized child day care provided, however, that the total participation of an individual district in all activities related to the provision of subsidized child day care shall be no less than the participation level engaged in by such individual district on the effective date of this section.

4. (a) The office of children and family services on an annual basis

shall inspect all child day care programs and all enrolled legally-exempt providers except when such provider is determined to be exempt in accordance with subparagraph (ii) of paragraph (d-one) of subdivision two of this section. The office of children and family services may provide for such inspections through purchase of services.

(b) Any family day care home or school-age child care program licensed, registered, or certified by the department or by any authorized agency on the effective date of this section shall be deemed registered until the expiration of its then-current license or certificate unless such license or certificate is suspended or revoked pursuant to subdivision ten of this section. Family day care homes and school-age child care programs not licensed, registered, or certified on the effective date of this section shall register pursuant to subdivision two of this section.

5. Child day care providers required to have a license from the department or to be registered with the department pursuant to this section shall not be exempt from such requirement through registration with another state agency, or certification, registration, or licensure by any local governmental agency or any authorized agency.

5-a. The office of children and family services shall provide, upon request, all applications and forms necessary to become a licensed or registered child day care provider in English, French, Polish, or any of the ten most common non-English languages spoken by individuals with limited-English proficiency in the state of New York, based on United States census data.

6. Unless otherwise limited by law, a parent with legal custody or a legal guardian of any child in a child day care program shall have unlimited and on demand access to such child or ward. Such parent or guardian unless otherwise limited by law, also shall have the right to inspect on demand during its hours of operation any area of a child day care center, group family day care home, school-age child care program, or family day care home to which the child or ward of such parent or guardian has access or which could present a hazard to the health and safety of the child or ward.

7. (a) The department shall implement on a statewide basis programs to educate parents and other potential consumers of child day care programs about their selection and use. The department may provide for such implementation through the purchase of services. Such education shall include, but not be limited to, the following topics:

- (i) types of child day care programs;
- (ii) factors to be considered in selecting and evaluating child day care programs;
- (iii) regulations of the department governing the operation of different types of programs;
- (iv) rights of parents or guardians in relation to access to children and inspection of child day care programs;
- (v) information concerning the availability of child day care subsidies;
- (vi) information about licensing and registration requirements;
- (vii) prevention of child abuse and maltreatment in child day care programs, including screening of child day care providers and employees;
- (viii) tax information; and
- (ix) factors to be considered in selecting and evaluating child day care programs when a child needs administration of medications during the time enrolled.

(b) The department shall implement a statewide campaign to educate the public as to the legal requirements for registration of family day care and school-age child care, and the benefits of such registration. The department may provide for such implementation through the purchase of services. The campaign shall:

- (i) use various types of media;
- (ii) include the development of public educational materials for families, family day care providers, employers and community agencies;
- (iii) explain the role and functions of child care resource and referral programs, as such term is used in title five-B of this article;
- (iv) explain the role and functions of the department in regard to registered programs; and
- (v) publicize the department's toll-free telephone number for making complaints of violations of child day care requirements related to programs which are required to be licensed or registered.

(c) The office of children and family services shall implement a statewide campaign to educate parents and other consumers of child day care programs about adverse childhood experiences, the importance of protective factors, and the availability of services for children at risk for or experiencing adverse childhood experiences as defined in paragraph (c) of subdivision one of section twenty-d of this chapter. Such statewide campaign, shall include but is not limited to, providing all licensed, registered and enrolled child care providers with educational materials developed pursuant to subdivision two of section three hundred seventy-c of this chapter. The educational materials may be made available electronically and shall be offered to parents and other consumers at the time of enrollment.

8. The department shall establish and maintain a list of all current registered and licensed child day care programs and a list of all programs whose license or registration has been revoked, rejected, terminated, or suspended. Such information shall be available to the public, pursuant to procedures developed by the department.

8-a. The office of children and family services shall not make available to the public online any group family day care home provider's or family day care provider's home street address or map showing the location of such provider's home where such provider has requested to opt out of the online availability of this information. The office shall provide a written form informing a provider of their right to opt out of providing information online, and shall also permit a provider to request to opt out through the office's website.

9. The department shall make available, directly or through purchase of services, to registered child day care providers information concerning:

- (a) liability insurance;
- (b) start-up grants;
- (c) United States department of agriculture food programs;
- (d) subsidies available for child day care;
- (e) tax information; and
- (f) support services required to be provided by child care resource

and referral programs as set forth in subdivision three of section four hundred ten-r of this article.

10. Any home or facility providing child day care shall be operated in accordance with applicable statutes and regulations. Any violation of applicable statutes or regulations shall be a basis to deny, limit, suspend, revoke, or terminate a license or registration. Consistent with articles twenty-three and twenty-three-A of the correction law, and guidelines referenced in subdivision two of section four hundred twenty-five of this article, if the office of children and family services is made aware of the existence of a criminal conviction or pending criminal charge concerning an operator of a family day care home, group family day care home, school-age child care program, or child day care center or concerning any assistant, employee or volunteer in such homes, programs or centers, or any persons age eighteen or over who reside in such homes, such conviction or charge may be a basis to deny, limit, suspend, revoke, reject, or terminate a license or registration. Before any license issued pursuant to the provisions of this section is suspended or revoked, before registration pursuant to this section is suspended or terminated, or when an application for such license is denied or registration rejected, the applicant for or holder of such registration or license is entitled, pursuant to section twenty-two of this chapter and the regulations of the office of children and family services, to a hearing before the office of children and family services. However, a license or registration shall be temporarily suspended or limited without a hearing upon written notice to the operator of the facility following a finding that the public health, or an individual's safety or welfare, are in imminent danger. The holder of a license or registrant is entitled to a hearing before the office of children and family services to contest the temporary suspension or limitation. If the holder of a license or registrant requests a hearing to contest the temporary suspension or limitation, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. Suspension shall continue until the condition requiring suspension or limitation is corrected or until a hearing decision has been issued. If the office of children and family services

determines after a hearing that the temporary suspension or limitation was proper, such suspension or limitation shall be extended until the condition requiring suspension or limitation has been corrected or until the license or registration has been revoked.

11. (a) (i) The office of children and family services shall adopt regulations establishing civil penalties of no more than five hundred dollars per day to be assessed against child day care centers, school age child care programs, group family day care homes or family day care homes for violations of this section, sections three hundred ninety-a and three hundred ninety-b of this title and any regulations promulgated thereunder. The regulations establishing civil penalties shall specify the violations subject to penalty.

(ii) The office of children and family services shall adopt regulations establishing civil penalties of no more than five hundred dollars per day to be assessed against child day care providers who operate child day care centers or group family day care homes without a license or who operate family day care homes, school-age child care programs, or child day care centers required to be registered without obtaining such registration.

(iii) In addition to any other civil or criminal penalty provided by law, the office of children and family services shall have the power to assess civil penalties in accordance with its regulations adopted pursuant to this subdivision after a hearing conducted in accordance with procedures established by regulations of the office of children and family services. Such procedures shall require that notice of the time and place of the hearing, together with a statement of charges of violations, shall be served in person or by certified mail addressed to the school age child care program, group family day care home, family day care home, or child day care center at least thirty days prior to the date of the hearing. The statement of charges shall set forth the existence of the violation or violations, the amount of penalty for which the program may become liable, the steps which must be taken to rectify the violation, and where applicable, a statement that a penalty may be imposed regardless of rectification. A written answer to the charges of violations shall be filed with the office of children and family services not less than ten days prior to the date of hearing with

respect to each of the charges and shall include all material and relevant matters which, if not disclosed in the answer, would not likely be known to the office of children and family services.

(iv) The hearing shall be held by the commissioner of the office of children and family services or the commissioner's designee. The burden of proof at such hearing shall be on the office of children and family services to show that the charges are supported by a preponderance of the evidence. The commissioner of the office of children and family services or the commissioner's designee, in his or her discretion, may allow the child day care center operator or provider to attempt to prove by a preponderance of the evidence any matter not included in the answer. Where the child day care provider satisfactorily demonstrates that it has rectified the violations in accordance with the requirements of paragraph (c) of this subdivision, no penalty shall be imposed except as provided in paragraph (c) of this subdivision.

(b)(i) In assessing penalties pursuant to this subdivision, the office of children and family services may consider the completeness of any rectification made and the specific circumstances of such violations as mitigating factors.

(ii) Upon the request of the office of children and family services, the attorney general shall commence an action in any court of competent jurisdiction against any child day care program subject to the provisions of this subdivision and against any person, entity or corporation operating such center or school age child care program, group family day care home or family day care home for the recovery of any penalty assessed by the office of children and family services in accordance with the provisions of this subdivision.

(iii) Any such penalty assessed by the office of children and family services may be released or compromised by the office of children and family services before the matter has been referred to the attorney general; when such matter has been referred to the attorney general, such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the office of children and family services.

(c)(i) Except as provided for in this paragraph, a child day care provider shall avoid payment of a penalty imposed pursuant to this subdivision where the provider has rectified the condition which

resulted in the imposition of the penalty within thirty days of notification of the existence of the violation of statute or regulation.

(ii) Clause (i) of this paragraph notwithstanding, rectification shall not preclude the imposition of a penalty pursuant to this subdivision where:

(A) the child day care provider has operated a child day care center or group family day care home without a license, has refused to seek a license for the operation of such a center or home, or has continued to operate such a center or home after denial of a license application, revocation of an existing license or suspension of an existing license;

(B) the child day care provider has operated a family day care home, school-age child care program or child day care center required to be registered without being registered, has refused to seek registration for the operation of such home, program or center or has continued to operate such a home, program or center after denial of a registration application, revocation of an existing registration or suspension of an existing registration;

(C) there has been a total or substantial failure of the facility's fire detection or prevention systems or emergency evacuation procedures;

(D) the child day care provider or an assistant, employee or volunteer has failed to provide adequate and competent supervision;

(E) the child day care provider or an assistant, employee or volunteer has failed to provide adequate sanitation;

(F) the child day care provider or an assistant, employee, volunteer or, for a family day care home or group family day care home, a member of the provider's household, has injured a child in care, unreasonably failed to obtain medical attention for a child in care requiring such attention, used corporal punishment against a child in care or abused or maltreated a child in care;

(G) the child day care provider has violated the same statutory or regulatory standard more than once within a six month period;

(H) the child day care provider or an assistant, employee or volunteer has failed to make a report of suspected child abuse or maltreatment when required to do so pursuant to section four hundred thirteen of this article; or

(I) the child day care provider or an assistant, employee or volunteer has submitted to the office of children and family services a forged

document as defined in section 170.00 of the penal law.

(d) Any civil penalty received by the office of children and family services pursuant to this subdivision shall be deposited to the credit of the "quality child care and protection fund" established pursuant to section ninety-seven-ww of the state finance law.

(e)(i) The office of children and family services shall deny a new application for licensure or registration made by a day care provider whose license or registration was previously revoked or terminated based on a violation of statute or regulation for a period of two years from the date that the revocation or termination of the license or registration became finally effective, unless such office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of children in the center, program or home. For the purposes of this paragraph, the date that the revocation or termination became finally effective shall be, as applicable:

(A) the date that the revocation or termination became effective based on the notice of revocation or termination;

(B) the date that the hearing decision was issued upholding the revocation or termination;

(C) the date of issuance of a final court order affirming the revocation or termination or affirming a hearing decision that upheld the revocation or termination; or

(D) another date mutually agreed upon by the office of children and family services and the provider.

(ii)(A) Such office shall deny a new application for licensure or registration made by a day care provider who is enjoined or otherwise prohibited by a court order from operation of a day care center, group family day care home, family day care home or school-age child care program without a license or registration for a period of two years from the date of the court order unless the court order specifically enjoins the provider from providing day care for a period longer than two years, in which case the office shall deny any new application made by the provider while the provider is so enjoined.

(B) Such office shall deny a new application for licensure or registration made by a day care provider who is assessed a second civil penalty by such office for having operated a day care center, group

family day care home, family day care home or school-age child care program without a license or registration for a period of two years from the date of the second fine. For the purposes of this paragraph, the date of the second fine shall be either the date upon which the day care provider signs a stipulation agreement to pay the second fine or the date upon which a hearing decision is issued affirming the determination of such office to impose the second fine, as applicable.

(iii) A day care provider who surrenders the provider's license or registration while such office is engaged in enforcement seeking suspension, revocation or termination of such provider's license or registration pursuant to the regulations of such office, shall be deemed to have had their license or registration revoked or terminated and shall be subject to the prohibitions against licensing or registration pursuant to subparagraph (i) of this paragraph for a period of two years from the date of surrender of the license or registration.

12. (a) Notwithstanding any other provision of law, except as may be required as a condition of licensure or registration by regulations promulgated pursuant to this section, no village, town (outside the area of any incorporated village), city or county shall adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises. No village, town (outside the area of any incorporated village), city or county shall prohibit or restrict use of a one or two family dwelling, or multiple dwelling for family or group family day care where a license or registration for such use has been issued in accordance with regulations issued pursuant to this section. Nothing in this paragraph shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards.

(b) Notwithstanding any other provision of law, but pursuant to section five hundred eighty-one-b of the real property tax law, no assessing unit, as defined in subdivision one of section one hundred two

of the real property tax law, in the assessment of the value of any parcel used for residential purposes and registered as a family day care home pursuant to this section, shall consider the use or registration of such parcel as a family day care home.

13. Notwithstanding any other provision of law, this section, except for subdivision fifteen of this section, shall not apply to child day care centers in the city of New York.

14. The office of children and family services, in conjunction with the department of health, shall be required to annually distribute informational materials related to the occurrence, transmission, birth defects, methods of diagnosis and preventive measures of Cytomegalovirus established pursuant to subdivision six of section two hundred sixty-six of the public health law to every licensed, registered or enrolled child care provider and their staff.

15. (a) Each child day care provider, enrolled legally-exempt provider, enrolled legally-exempt group provider, and child care program permitted under the New York City health code shall establish written procedures that identify the actions the provider or program shall take if the provider or program becomes aware that the parent or guardian shall be unavailable to retrieve the child at the conclusion of the child care program hours or the child is not picked up as scheduled, and such child is in need of an alternate plan for pickup for any reason, including that the parent or guardian has been detained by federal immigration authorities.

(b) Such procedures shall be established and implemented no later than ninety days after the effective date of this subdivision, and shall be provided to families upon implementation, admission, and revision.

(c) Such procedures shall include, at a minimum, that the provider shall not contact the statewide central register for child abuse and maltreatment unless the provider has made reasonable efforts to contact all known individuals authorized by the parent or guardian to retrieve the child, and that the provider shall retain the child on the premises until such child is picked up by an individual authorized by the parent or guardian or by law.

§ 390-a. Standards and training for child day care. 1. All office of children and family services and municipal staff employed to accept registrations, issue licenses or conduct inspections of child day care homes, programs or facilities, subject to the amounts appropriated therefor, shall receive: (a) training in at least the following: regulations promulgated by the office of children and family services pursuant to section three hundred ninety of this title; child abuse prevention and identification; safety and security procedures in child day care settings; the principles of childhood development, and the laws, regulations and procedures governing the protection of children from abuse or maltreatment; and (b) guidance on identification of circumstances that may indicate the presence of controlled substances and referrals to law enforcement.

2. No license or registration shall be issued to a family day care home, group family day care home, school age child care program or child day care center and no such registration or license shall be renewed until it can be demonstrated by the employer or licensing agency that there is a procedure developed and implemented, in accordance with section three hundred ninety-b of this title and pursuant to regulations of the office of children and family services, to:

(a) review and evaluate the backgrounds of and information supplied by any person applying to be a child day care center or school-age child care program employee or volunteer or group family day care assistant, a provider of family day care or group family day care, or a director of a child day care center, head start day care center or school-age child care program. Such procedures shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references; submit such information as is required for screening with the statewide central register of child abuse and maltreatment in accordance with the provisions of section four hundred twenty-four-a of this article; sign a sworn statement indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this state or any other jurisdiction; and provide his or her fingerprints for submission to the

division of criminal justice services in accordance with the provisions of section three hundred ninety-b of this title;

(b) establish relevant minimal experiential and educational qualifications for employees and directors of child day care centers or head start day care center programs;

(c) assure adequate and appropriate supervision of employees and volunteers of group family day care homes, family day care homes, child day care centers and school-age child care programs; and

(d) demonstrate, in the case of child day care centers, group family day care homes, family day care homes and school-age child care programs the existence of specific procedures which will assure the safety of a child who is reported to the state central register of child abuse and maltreatment as well as other children provided care by such homes, centers or programs, immediately upon notification that a report has been made with respect to a child named in such report while the child was in attendance at such homes, centers or programs.

(e) establish necessary rules to provide for uniform visitor control procedures, including visitor identification.

3. (a) The office of children and family services shall promulgate regulations requiring operators, program directors, employees and assistants of family day care homes, group family day care homes, school-age child care programs and child day care centers to receive pre-service and annual training, as applicable. Provided however that such providers shall be required to receive thirty hours of training every two years; provided, however, any individual or provider who is already in compliance with this subdivision, prior to the effective date of the chapter of the laws of two thousand nineteen that amended this subdivision, shall only be required to complete any additional federal training requirements which they have not already completed in order to be deemed in compliance with this subdivision. Fifteen hours of such training must be received within the first six months of the initial licensure, registration or employment. Such training requirements shall also apply to any volunteer in such day care homes, programs or centers who has the potential for regular and substantial contact with children. The thirty hours of training required during the first biennial cycle after initial licensure or registration shall include training received

while an application for licensure or registration pursuant to section three hundred ninety of this title is pending. The office of children and family services may provide this training through purchase of services.

(b) The training required in paragraph (a) of this subdivision shall address topics and subject matters required by federal law and the following topics or subject matters, unless such topics or subject matters are substantially covered in training that is required pursuant to federal law:

(i) principles of childhood development, focusing on the developmental stages of the age groups for which the program provides care;

(ii) nutrition and health needs of infants and children;

(iii) child day care program development;

(iv) safety and security procedures;

(v) business record maintenance and management;

(vi) child abuse and maltreatment identification and prevention;

(vii) statutes and regulations pertaining to child day care;

(viii) statutes and regulations pertaining to child abuse and maltreatment;

(ix) for operators, program directors, employees and assistants of family day care homes, group family day care homes and child day care centers, education and information on the identification, diagnosis and prevention of shaken baby syndrome; and

(x) adverse childhood experiences (ACEs), focused on understanding trauma and on nurturing resiliency.

(c) For the thirty hours of biennial training required after the initial period of licensure or registration, each provider who can demonstrate basic competency shall determine in which of the specified topics he or she needs further study, based on the provider's experience and the needs of the children in the provider's care.

(d) Family day care home and group family day care home operators shall obtain training pertaining to protection of the health and safety of children, as required by regulation, prior to the issuance of a license or registration by the office of children and family services.

(e) Upon request by the office of children and family services, the child day care applicant or provider shall submit documentation demonstrating compliance with the training requirements of this section.

4. No license or registration shall be issued to a family day care home or group family day care home and no such registration shall be renewed if barriers, as defined in paragraph (d) of subdivision one of section three hundred ninety-d of this title, are not present around any swimming pool or body of water, as defined in paragraphs (b) and (c) of subdivision one of section three hundred ninety-d of this title, located on its grounds, pursuant to section three hundred ninety-d of this title.

5. a. The site provider of a family day care home or group family day care home shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family services, be on premises during the operating hours of such family day care home or group family day care home.

b. The site supervisor of a school-age child care program shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family services, be on premises during the operating hours of such school-age child care program.

c. The director of a child day care center shall provide that at least one employee who holds a valid certification in a course of study in first aid knowledge and skills and cardiopulmonary resuscitation, with an emphasis on providing that aid to children, as approved by the commissioner of the office of children and family services, be on premises during the operating hours of such child day care center.

§ 390-b. Criminal history review and background clearances of child care providers, generally.

1. Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the office of children and family services and, where applicable, the division of criminal justice services, the following clearances shall be conducted for entities specified in subdivision two of this section in the time and manner as required by this section:

(a) a criminal history record check with the division of criminal justice services;

(b) a search of the criminal history repository in each state other than New York where such person resides or resided during the preceding five years, if applicable unless such state's criminal history record information will be provided as part of the results or the clearance conducted pursuant to paragraph (c) of this subdivision;

(c) a national criminal record check with the federal bureau of investigation; the division of criminal justice services is directed to submit fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check, pursuant to and consistent with public law 113-186 to determine whether such persons shall have a criminal history in any state or federal jurisdiction;

(d) a search of the New York state sex offender registry;

(e) a search of any state sex offender registry or repository in each state other than New York where such person resides or resided during the preceding five years, if applicable unless such state's sex offender registry information will be provided as part of the clearance conducted pursuant to paragraph (f) of this subdivision;

(f) a search of the national sex offender registry using the national crime and information center, established under the Adam Walsh child protection and safety act of 2006 (42 U.S.C. 16901 et seq.);

(g) a database check of the statewide central register of child abuse and maltreatment in accordance with section four hundred twenty-four-a of this article; and

(h) a search of a state-based child abuse or neglect repository of any state other than New York where such person resides or resided during the preceding five years; if applicable.

1-a. For purposes of this section, and in accordance with federal law, the term "enrolled legally-exempt provider" shall refer to a person who

meets the definition of "enrolled legally-exempt provider" as defined in paragraph (g) of subdivision one of section three hundred ninety of this title and who is not an individual who is related to all children for whom child care services are provided.

2. In relation to any child day care program and any enrolled legally-exempt provider:

(a) the clearances required pursuant to paragraphs (a), (c), (d) and (g) of subdivision one of this section shall be conducted for:

(i) every prospective volunteer with the potential for unsupervised contact with children in care;

(ii) every applicant to become an enrolled legally-exempt provider;

(iii) every prospective employee, director or operator of such a program or provider; and

(iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and

(v) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider;

(b) notwithstanding any other provision of law to the contrary, prior to October first, two thousand twenty, all clearances listed in subdivision one of this section that have not previously been conducted pursuant to paragraph (a) of this subdivision and for which on-going criminal history results are not already provided, shall be conducted in accordance with a schedule developed by the office of children and family services, for all:

(i) existing volunteers with the potential for unsupervised contact with children in care;

(ii) existing caregivers for an enrolled legally exempt provider;

(iii) existing employees, directors and operators of any such program or provider; and

(iv) every individual eighteen years of age and over residing or who begins to reside in a home where services are or will be provided in a family or group family setting; and

(v) every individual eighteen years of age and over residing or who

begins to reside in a home where services are or will be provided who are not related in any way to all children receiving services as or will be provided by an enrolled legally exempt provider;

(c) notwithstanding any other provision of law to the contrary, the clearances required pursuant to this section other than those for which on-going criminal history results are provided, shall be conducted for a person listed in subparagraphs (i), (ii), (iii) and (iv) of paragraph (b) of this subdivision at least once every five years in accordance with a schedule developed by the office of children and family services.

3. (a) Notwithstanding any other provision of law to the contrary, in relation to the clearances required pursuant to this section, an individual or a program or provider shall be deemed ineligible, as such term is defined in paragraph (b) of this subdivision, if such individual:

(i) refuses to consent to such clearance;

(ii) knowingly makes a materially false statement in connection with such a clearance;

(iii) is registered, or is required to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh child protection and safety act of 2006 (42 U.S.C. 16901 et seq.); or

(iv) has been convicted of a crime enumerated in subparagraph (E) or clauses (i) through (viii) of subparagraph (D) of paragraph (1) of subdivision (C) of 42 U.S.C. 9858f.

(b) For purpose of this subdivision, the term "ineligible" shall mean:

(i) the individual who engaged in conduct listed in paragraph (a) of this subdivision shall not be permitted to:

(1) operate, direct, be the caregiver for, or be employed by a child day care program or an enrolled legally-exempt provider; or

(2) be a volunteer with the potential for unsupervised contact with children in a child day care program or with an enrolled legally-exempt provider; or

(3) be an enrolled legally exempt provider; or

(ii) in relation to child day care programs or any enrolled legally-exempt providers, where child care is, or is proposed to be provided, to a child in a home setting where such child does not reside,

such program or provider shall not be eligible to operate or to be enrolled to serve children receiving child care subsidies pursuant to title five-C of this article, if an individual over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, resides in the household where child care is, or is proposed to be provided, engaged in conduct listed in paragraph (a) of this subdivision.

3-a. (a) In relation to child day care programs and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals that any existing operator, director, caregiver, or person over the age of eighteen who is not related in any way to all children for whom child care services are or will be provided, that resides in a home where child care is provided in a home setting where the child does not reside has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program, and may deny, limit, suspend, revoke or reject such program's license or registration or terminate or reject such program's enrollment, as applicable, unless the office of children and family services, determines in its discretion, that continued operation by the child day care program or enrolled legally-exempt provider will not in any way jeopardize the health, safety or welfare of the children cared for in the program or by the provider.

(b) In relation to child day care programs and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals that any existing employee or volunteer with the potential for unsupervised contact with children has been convicted of a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, the office of children of family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program. The office of children

and family services may direct the program or provider to terminate the employee or volunteer based on such a conviction, consistent with article twenty-three-A of the correction law.

(c) (i) In relation to any child day care programs and any enrolled legally-exempt providers, where a clearance conducted pursuant to this section reveals a conviction for a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, for any prospective employee or volunteer, the office of children and family services may direct that such person not be hired, as applicable, based on such a conviction, consistent with article twenty-three-A of the correction law.

(ii) In relation to any child day care program and any enrolled legally-exempt provider, when a clearance conducted pursuant to this section reveals a conviction for a crime other than one set forth in subparagraph (iv) of paragraph (a) of subdivision three of this section, and unless such crime is eligible for expungement pursuant to section 160.50 of the criminal procedure law, for any prospective caregiver seeking enrollment, or applicant to be a director or operator, the office of children and family services may deny the application or enrollment, consistent with article twenty-three-A of the correction law.

(d) (i) Where a clearance conducted pursuant to this section reveals that an applicant to be the operator or director of a child day care program, or applicant to be a caregiver, or anyone who is not related in any way to all children for whom child care services will be provided, resides in the home over the age of eighteen where child day care is proposed to be provided to children in a home-based setting has been charged with a crime, the office of children and family services shall hold the application in abeyance until the charge is finally resolved.

(ii) Where a clearance conducted pursuant to this section reveals that the current operator or director of a child day care program, or any person over the age of eighteen who is not related in any way to all children for whom child care services will be provided, that resides in a home where child day care is provided has been charged with a crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the

health and safety of children in the program. The office of children and family services may suspend a license or registration or terminate enrollment based on such a charge when necessary to protect the health and safety of children in the program.

(iii) Where a clearance conducted pursuant to this section reveals that an existing caregiver, volunteer or an existing employee of an enrolled legally-exempt provider or any person over the age of eighteen that resides in a home where the child care is provided by an enrolled legally-exempt provider in a home setting where the child does not reside, has been charged with a crime, the office of children and family services shall take one or more of the following steps:

(A) Conduct a safety assessment; or

(B) Take all appropriate steps to protect the health and safety of children in the program.

(iv) Where a clearance conducted pursuant to this section reveals that an applicant to be an employee or volunteer with the potential for unsupervised contact with children of a child day care program or enrolled legally-exempt provider has been charged with a crime, the office shall hold the application in abeyance until the charge is finally resolved.

(v) Where a clearance conducted pursuant to this section reveals that a current employee, or current volunteer with the potential for unsupervised contact with children of a child day care program has been charged with a crime, the office of children and family services shall conduct a safety assessment of the program and take all appropriate steps to protect the health and safety of the children in the program.

3-b. All persons who are subjected to a criminal history and background clearance and safety assessment pursuant to this section who the office of children and family services determines: (i) should be denied enrollment, employment, or the ability to volunteer pursuant to a background clearance analysis performed by the office of children and family services, and (ii) where such denial is not based on an offense listed in paragraph (a) of subdivision three of this section, shall have the ability to request a de novo review of the article twenty-three-a of the correction law determination in an administrative hearing before an administrative law judge, to be held and completed before the present

employer is notified of such clearance determination. Such person shall have reasonable notice concerning the determination, and information regarding how to request a hearing to review that determination, and an opportunity to provide any additional information that such person deems relevant to such determination. Such person may choose to be heard in person, by video conference if reasonably available, or through submission of written materials. Where such request is made, the office of children and family services shall also have an opportunity to be heard.

4. Prior to making a determination to deny an application pursuant to subdivision three of this section, the office of children and family services shall afford the applicant an opportunity to explain, in writing, why the application should not be denied.

5. Notwithstanding any other provision of law to the contrary, the office of children and family services, upon receipt of a criminal history record from the division of criminal justice services, may request, and is entitled to receive, information pertaining to any crime contained in such criminal history record from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any ground relating to such criminal conviction or pending criminal charge exists for denying a license, registration, application or employment.

6. The office of children and family services shall pay any required processing fee for a criminal history or sex offender clearance pursuant to this section. The office of children and family services shall promptly submit fingerprints obtained pursuant to this section and such processing fee to the division of criminal justice services.

7. Where the office of children and family services or its designee denies or directs a child day care or an enrolled legally-exempt provider to deny an application based on the criminal history record; (a) the provider must notify the applicant that such record is the basis of the denial; and (b) the office of children and family services shall also notify as the case may be, such current or prospective operator,

director, employee, assistant, legally exempt provider, volunteer with the potential for unsupervised contact with children or other person eighteen years of age or older, who resides in the home where care is provided, other than the child's home, that the criminal record check was the basis for the denial of clearance and shall provide such individual with a copy of the results of the national criminal record check upon which such denial was based together with a written statement setting forth the reasons for such denial, as well as a copy of article twenty-three-A of the correction law and inform such individual of his or her right to seek correction of any incorrect information contained in such national record check provided by the federal bureau of investigation.

8. Any safety assessment required pursuant to this section shall include a review of the duties of the individual, the extent to which such individual may have contact with children in the program or household and the status and nature of the criminal charge or conviction. Where the office of children and family services performs the safety assessment, it shall thereafter take all appropriate steps to protect the health and safety of children receiving care in the child day care center, school age child care program, family day care home or group family day care home.

9. (a) Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to a person that receives a clearance pursuant to this section, is confidential and shall not be available for public inspection; provided, however, nothing herein shall prevent the office of children and family services from disclosing criminal history information or the individual from disclosing his or her criminal history information at any administrative or judicial proceeding relating to the denial or revocation of an application, employment, license or registration. The subject of a criminal history review conducted pursuant to this section shall be entitled to receive, upon written request, a copy of the summary of the criminal history record. Unauthorized disclosure of such records or reports shall be subject to civil penalties in accordance

with the provisions of subdivision eleven of section three hundred ninety of this title.

(b) The office of children and family services shall not release the content of the results of the nationwide criminal history record check conducted by the federal bureau of investigation in accordance with this subdivision to any non-public entity.

10. A child day care or enrolled legally-exempt provider shall advise the office of children and family services when an individual who is subject to criminal history record review in accordance with subdivision one or two of this section is no longer subject to such review. The office of children and family services shall inform the division of criminal justice services when an individual who is subject to criminal history review is no longer subject to such review so that the division of criminal justice services may terminate its retain processing with regard to such person. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

11. Child day care centers which are not subject to the provisions of section three hundred ninety of this title shall not be subject to the provisions of this section, provided however, that the city of New York shall require that such child day care centers meet the requirements of any federal laws and regulations pertaining to the child care development and block grant and the related federally approved plans of the state of New York.

12. A child care support center certified pursuant to section three hundred ninety-n of this title shall be authorized to request clearances for substitute caregivers in accordance with this section. Substitute caregivers shall be considered "prospective employees" of a child day care program under subparagraph (iii) of paragraph (a) of subdivision two of this section.

*** § 390-c. Notice of pesticide applications.** 1. For the purposes of this section the following terms shall have the meanings set forth

below:

(a) "Pesticide" shall have the same meaning as in subdivision thirty-five of section 33-0101 of the environmental conservation law.

(b) "Daycare facility" shall mean licensed and registered child daycare homes, programs and facilities.

2. Each daycare facility shall be subject to the following notice requirements when pesticides are used at such facility:

(a) A notice of each pesticide application shall be posted in a common area of the facility which is conspicuously visible to persons dropping off or picking up children from the facility. Such notice shall be posted not less than forty-eight hours prior to the pesticide application.

(b) The notice required to be posted pursuant to paragraph (a) of this subdivision shall include at a minimum:

(i) the location and specific date of the application at the daycare facility. In case of outdoor applications the notice must provide a specific date, and may include two alternative dates in case the application cannot be made due to weather conditions.

(ii) the product name and pesticide registration number assigned by the United States Environmental Protection Agency.

(iii) the following statement "This notice is to inform you of a pending pesticide application at this facility. You may wish to discuss with a representative of the daycare facility what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product or products being applied, including any warnings that appear on the label of the pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticide Telecommunications Network Information at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158".

(iv) the name of a representative of the daycare facility and contact number for additional information.

(c) For purposes of this section the following pesticide applications shall not be subject to the notification posting requirements:

(i) the application of anti microbial pesticides and anti microbial products as defined by FIFRA in 7 U.S.C. §136 (mm) and 136q (h) (2);

(ii) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces, or less, when used to protect individuals from an imminent threat from stinging and biting insects including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

(iii) any application where the daycare facility remains unoccupied for a continuous seventy-two hour period following the application of the pesticide;

(iv) nonvolatile rodenticides in tamper resistant bait stations or in areas inaccessible to children;

(v) silica gels and other nonvolatile ready-to-use, paste, foam or gel formulations of insecticides in areas inaccessible to children;

(vi) nonvolatile insecticidal baits in tamper resistant bait stations or in areas inaccessible to children;

(vii) application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under section 40 CFR Part 152.25;

(viii) boric acid and disodium octaborate tetrahydrate;

(ix) the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide; or

(x) any emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided however, that prior to any such emergency application, the person making such application shall make a good faith effort to supply the written notice required pursuant to this section. Upon making such an emergency application, the person making such application shall notify the commissioner of health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making the application, the pesticide business registration number or certified applicator number of the person making such application, the location and date of such application, the product name and USEPA registration number of the pesticide applied and the reason for such application. The commissioner of health shall review such form to ensure that the circumstance did warrant such emergency application. Such forms shall be kept on file at the department of health for three years from the date of application

and shall be available to any individual upon request.

3. Any person, other than a daycare facility, who contracts for the application of a pesticide at a daycare facility shall provide to such facility operator information required to be contained in the posting pursuant to subdivision two of this section at least forty-eight hours prior to such application.

4. (a) Any daycare facility that violates the provisions of subdivision two of this section shall, for a first such violation of this section, in lieu of penalty, be issued a written warning and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such facility shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner after a hearing or opportunity to be heard.

(b) Any person who violates subdivision three of this section shall, for a first such violation of this section, in lieu of penalty, be issued a written warning, and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such person shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner of environmental conservation after a hearing or opportunity to be heard.

* NB There are 2 § 390-c's

*** § 390-c. Additional powers and duties of the office of children and family services.** 1. The commissioner of children and family services is authorized and directed to promulgate necessary rules and regulations to ensure that, whenever a child day care provider is licensed or registered pursuant to section three hundred ninety of this article, the police department and fire department of the municipality wherein such

licensee or registrant is authorized to operate and the state police shall be notified of the existence of the child day care center, its location and the fact that children are likely to be at that location in the event of an emergency. In those cases where the local municipality does not have a police department or a fire department, the sheriff of the appropriate county shall be notified in lieu thereof.

2. The commissioner of children and family services is authorized and directed to conduct a study to determine the best method of compiling an accurate and accessible central record of information regarding the safe operation of each day care center licensed or registered within the state. Such record should include but not be limited to complaints by parents or guardians, internal incident reports, reports by police or fire departments, local or state building code violations, any relevant information gathered from utility providers or other visitors to the day care center and any additional information held by another state or local agency regarding a day care provider or a day care center location which could affect safe operation of a day care center.

3. On or before the thirtieth day of June in the year next succeeding the year in which this section takes effect, the commissioner of children and family services shall report to the governor, the temporary president of the senate and the speaker of the assembly regarding the results of the study undertaken pursuant to subdivision two of this section.

4. The commissioner of children and family services is authorized and directed, no later than one year from the effective date of this subdivision, to promulgate rules and regulations to require that local social services districts offer child day care providers, as defined in section three hundred ninety of this title, the option to be paid any monies owed for providing subsidized child care by a deposit directly into a bank account of the child day care provider. Such direct deposit shall only be made at the express written consent of the provider and shall be requested on forms provided by the local social services district and duly filled in by the provider. Such written consent can be revoked at any time by the provider in writing on forms provided by the

local social services district.

* NB There are 2 § 390-c's

§ 390-d. Requiring barriers to be placed around swimming pools and bodies of water on the grounds of family day care homes or group family day care homes. 1. For the purposes of this section the following terms shall have the meanings set forth below:

(a) "Grounds of a family day care home or group family day care home" shall mean in, on or within any building, structure or land contained within the real property boundary line of a family day care home or a group family day care home.

(b) "Swimming pool" shall mean any outdoor pool or tub intended for swimming, bathing or wading purposes.

(c) "Bodies of water" shall include, but not limited to, ponds, springs, streams, creeks, lakes, rivers and oceans.

(d) "Barriers" shall mean all fences, enclosures or other materials sufficient to form an obstruction to the free passage of persons through such materials.

2. (a) Any swimming pool or body of water located on the grounds of a family day care home or group family day care home shall be surrounded by a barrier sufficient to form an obstruction to the free passage of children through such barrier into such swimming pool or body of water. Such barrier shall be adequate to make such swimming pool or body of water inaccessible to children which, including gates thereto, shall be at least four feet high from the adjacent ground. All such gates shall include a locked barrier which shall be located at least four feet high above the adjacent ground or otherwise made inaccessible to children from the outside.

(b) Where a body of water is present and not wholly contained within the grounds of family day care home or group family day care home, the grounds of such home must be surrounded and enclosed by a barrier sufficient to make such body of water inaccessible to children.

(c) All pathways, walkways, decks or any other connecting entrance to such swimming pool or body of water shall be obstructed by a barrier sufficient to impede the free passage of children into or around the

area immediately adjacent to such swimming pool or body of water.

(d) Swimming pools or bodies of water that are entirely covered by a solid object which is secured by sufficient weight, locking apparatus, and/or other device that would prevent a child in care from removing the solid object and accessing the swimming pool or body of water, shall be considered a sufficient barrier for the purposes of this section.

(e) As an alternative to surrounding the pool or other body of water located on the grounds of a family day care home or group family day care home with a barrier as described in paragraph (a) of this subdivision, the day care provider may use the property for day care if the provider bars access to such pool or other body of water by surrounding a part of the grounds not including such pool or other body of water with a barrier as described in paragraph (a) of this subdivision provided that:

(i) There is no unsecured means of egress from the home by which children could gain access to the pool or other body of water. For purposes of this paragraph, the day care provider may secure a door or other means of egress that is remotely located from the pool or other body of water by use of an alarm device or system that will alert the day care provider if the door or other means of egress is opened;

(ii) All children in care are directly and closely supervised by the provider or an assistant at all times the children are outside the home or other dwelling where the day care is provided; and

(iii) The parents or guardians of each child in care have submitted to the provider a written acknowledgment that the pool or other body of water exists, that a barrier as otherwise required by this section has not been provided, and that the children will have the potential for access to the pool or other body of water.

(f) Where a natural barrier or other obstacle located on the property lies between the pool or body of water and the building in which the family or group family day care is provided such that the natural barrier or other obstacle prevents access by children in care to the pool or body of water, a fence or additional barrier as otherwise required by this section shall not be required and the day care provider may use the property for day care provided that:

(i) There is no unsecured means of egress from the home by which children could gain access to the pool or other body of water. For

purposes of this paragraph, the day care provider may secure a door or other means of egress that is remotely located from the pool or other body of water by use of an alarm device or system that will alert the day care provider if the door or other means of egress is opened;

(ii) All children in care are directly and closely supervised by the provider or an assistant at all times the children are outside the home or other dwelling where the day care is provided; and

(iii) The parents or guardians of each child in care have submitted to the provider a written acknowledgment that the pool or other body of water exists, that a barrier as otherwise required by this section has not been provided, and that the children will have the potential for access to the body of water.

In determining what constitutes a natural barrier or other obstacle for purposes of this paragraph, the presence of natural and artificial terrain features or constructs may be considered along with the distance between the building in which the family or group family day care is provided and the pool or body of water.

3. Where a swimming pool or body of water is located on a property adjacent to a family or group family day home, the child day care provider must take suitable precautions to prevent the children in care from having access to the adjacent swimming pool or body of water, including taking any precautions specifically required by the office of children and family services to protect the safety of children receiving day care.

4. Nothing in this section shall preclude local authorities with enforcement jurisdiction of the applicable sanitation, health, fire safety or building construction code from making appropriate inspections to assure compliance with such standards.

§ 390-e. Criminal history review; mentoring programs. 1. For the purposes of this section, the following words shall have the following meanings:

(a) "Prospective employee" shall mean a person being considered for

employment by a mentoring program.

(b) "Prospective mentor" shall mean an individual who is currently applying to volunteer to help a child or a group of children in a mentoring program for a period of time. Such help shall include, but not be limited to, being a positive role model for youth, building relationships with youth, and providing youth with academic assistance and exposure to new experiences and examples of opportunity that enhance the ability of children to become responsible adults.

(c) "Mentoring program" shall mean a formalized program, operated by a corporation which has been incorporated pursuant to subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law or pursuant to subparagraph four of paragraph (a) of section one hundred two of the business corporation law, or operated by an educational institution or school district, that matches youth with adult volunteers with the purpose of providing such youth with positive role models to enhance their development.

(d) "Office" shall mean the office of children and family services.

2. Mentoring programs may perform a criminal history record check on all prospective employees and mentors.

3. Notwithstanding any other provision of law to the contrary, subject to the rules and regulations of the division of criminal justice services, mentoring programs may apply for a criminal history record check with the division of criminal justice services regarding any prospective employee or any prospective mentor who may engage in unsupervised activities with youth or in activities with youth in a setting without constant agency or parental oversight. Each mentoring program that chooses to complete such criminal background checks on prospective employees or on prospective mentors shall establish a policy for completing criminal background checks on such prospective employees or mentors. Such policy shall apply one uniform standard for the completion of criminal background checks for all prospective employees and one uniform standard for the completion of criminal background checks for all prospective mentors. Any mentoring program that chooses to complete criminal background checks on both prospective employees and prospective mentors may utilize the same uniform process for the

completion of the criminal background checks on prospective employees and prospective mentors or they may choose one uniform process for prospective employees and another uniform process for prospective mentors.

4. Every mentoring program that chooses to apply for a criminal history background check with the division of criminal justice services shall obtain a set of fingerprints from each individual for whom a criminal background check is to be completed and such other information as is required by the office and the division of criminal justice services. For each prospective employee or mentor for whom the mentoring program completes a criminal background check, the mentoring program shall provide the applicant with blank fingerprint cards and a description of how the completed fingerprint card will be used upon submission to the mentoring program. The mentoring program shall promptly transmit such fingerprint card and the processing fee to the office. The office shall promptly submit the fingerprint card and the processing fee, imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, to the division of criminal justice services for its full search and retain processing.

5. Upon receipt of a criminal history record from the division of criminal justice services, the office shall promptly provide to the mentoring program the criminal history record, if any, with respect to the prospective employee or mentor, or a statement that the individual has no criminal history record.

6. Upon receipt of the results of a criminal background check pursuant to this section, the mentoring program shall determine whether or not the prospective employee or mentor shall be offered employment or the opportunity to volunteer with the program. Such determination shall be made in accordance with the criteria established in section seven hundred fifty-two of the correction law.

7. Upon the request of any person previously convicted of one or more criminal offenses who has been denied employment pursuant to subdivision six of this section, the mentoring program shall provide, within thirty

days of such request, a written statement setting forth the reasons for such denial. Any such person denied employment pursuant to subdivision six of this section shall be afforded the opportunities for enforcement available pursuant to section seven hundred fifty-five of the correction law.

8. Notwithstanding the provisions of this section, with the exception of a sex offense or a crime against a child, a custodial parent or guardian may sign a waiver authorizing a mentor to work with his or her child regardless of a criminal charge or crime related to a mentor. Such process shall only be initiated upon the consent of the prospective mentor, and be on a form and of a content to be developed by the office. Where applicable, a mentoring program may notify a custodial parent or guardian of his or her waiver right, but a waiver shall only be authorized by a custodial parent or guardian.

9. Any criminal history record provided to a mentoring program pursuant to this section shall be confidential pursuant to the applicable federal and state laws, rules and regulations, and shall not be published or in any way disclosed to persons other than authorized personnel, unless otherwise authorized by law.

10. Every mentoring program shall provide each custodial parent or guardian of every child participating in its mentoring program with a description of the kind of criminal background checks conducted by the mentoring program on its prospective employees and mentors. Such description shall include identification of the source utilized to obtain criminal background histories on prospective employees and mentors, a list of crimes that would lead the program to deny employment or the opportunity to volunteer as a prospective employee or mentor, and any other process utilized to determine whether or not a prospective employee or mentor with a conviction record shall be offered employment or the opportunity to volunteer. Such description shall clearly state whether or not prospective employees or mentors may be hired or offered the opportunity to volunteer despite the existence of a conviction history.

§ 390-f. Report on child care insurance. The commissioner of the office of children and family services in consultation with the superintendent of financial services, shall undertake a study of the availability, accessibility, and affordability of insurance policies to child care providers. The study shall include, but not be limited to, a review of homeowner insurance policies and health insurance policies. The study shall be completed and a report submitted no later than January first, two thousand nine, to the governor, the commissioner of the office of children and family services, the temporary president of the senate and the speaker of the assembly.

§ 390-g. Pesticide alternatives. 1. For purposes of this section the following terms shall have the meanings set forth below:

(a) "Day care" shall apply to all child day care centers or head start day care centers, as defined in section three hundred ninety of this title.

(b) "Pesticide" shall have the same meaning as set forth in subdivision thirty-five of section 33-0101 of the environmental conservation law, provided however that it shall not include:

(i) the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136(mm) and 136q(h)(2);

(ii) the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets;

(iii) the use of non-volatile insect or rodent bait in a tamper resistant container;

(iv) the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;

(v) the use of boric acid and disodium octaborate tetrahydrate; or

(vi) the use of horticultural soap and oils that do not contain synthetic pesticides or synergists.

2. No day care shall apply pesticide to any playgrounds, turf,

athletic or playing fields, except that an emergency application of a pesticide may be made as determined by the county health department or for a county not having a health department such authority as the county legislature shall designate, the commissioner of health or his or her designee, the commissioner of environmental conservation or his or her designee, or, in the case of a public school, the school board.

§ 390-h. Notice requirement before closing certain day care centers.

1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Child day care center" shall mean a child day care center as defined in paragraph (c) of subdivision one of section three hundred ninety of this title.

(b) "Person legally responsible" shall mean a person legally responsible as defined in subdivision (g) of section one thousand twelve of the family court act.

2. (a) Notwithstanding any other provision of law to the contrary, in a city having a population of one million or more, if the social services district seeks to close a child day care center under contract with such district, it shall provide at least six months written notice to the child day care center and the parents or persons legally responsible for children enrolled in such centers, prior to the closing.

(b) Paragraph (a) of this subdivision shall not apply in cases where a local social services district seeks to close a child day care center for violating the regulations of the office of children and family services, or for health and safety reasons.

(c) Paragraph (a) of this subdivision shall not apply in cases where a local social services district seeks to close a child day care center on an expedited basis for reasons of public safety, criminal behavior by the center, breach of contract with the local social services district, suspension or revocation of the center's license for non-economic reasons.

§ 390-i. Notice of inspection report. In every child day care program

that is licensed or registered pursuant to section three hundred ninety of this title, the child day care provider shall post and maintain in a prominent place, a notice, to be provided by the office of children and family services, that shall state the date the most recent child care inspection occurred and provide information for parents and caregivers regarding how to obtain information from such office regarding the results of the inspection. If possible, the child day care provider shall also post such information on the child day care program's website. Such child day care programs shall post and maintain, in a prominent place, such program's most recent compliance history as shown on the office of children and family services website.

§ 390-j. Performance summary card in a city having a population of one million or more. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Child care service" shall mean any person who provides child day care in a city having a population of one million or more that is required to obtain a permit to operate pursuant to the health code of such city.

(b) "Performance summary card" shall mean an individualized placard that summarizes the health and safety inspections of a child care service to reflect its compliance with applicable laws. The performance summary card shall summarize recent inspection violations and suspensions as required by rules promulgated by the department issuing such card. A performance summary card may also include additional information such as the capacity of the child care service, the length of time for which such child care service has operated, a comparison of the child care service to other child care services in the same social services district, and other information required by such department's rules.

2. Performance summary card. The department of health and mental hygiene of a city having a population of one million or more shall issue a performance summary card to each child care service that is required to be permitted by the board of health of such city. Such performance card shall be updated and reissued by such department at least once

every twelve months. The child care service shall conspicuously post its most recently issued performance summary card at or near its entrance in accordance with rules promulgated by such department.

§ 390-l. Securing of furniture. 1. This section shall apply to any child day care center as defined in paragraph (c) of subdivision one of section three hundred ninety of this title, or any authorized agency as defined in paragraph (a) of subdivision ten of section three hundred seventy-one of this title, including any agency boarding home or group home.

2. Any facility to which this section applies shall take measures to securely anchor to the floors or walls of such facility all items of large furniture and all electronic appliances capable of being tipped over due to design, height, weight, stability or other features, using angle-braces, anchors or other anchoring devices. Any item of furniture or electronic device which cannot be so anchored shall be removed from the facility.

3. If a violation of the provisions of this section is discovered by the office of children and family services or any local social services district authorized to inspect the facility at which the violation occurs, the agency discovering the violation shall provide written notice of the violation to the operator of the facility and to the office of children and family services if such office is not the inspecting agency within ten calendar days of the discovery of the violation. The operator of the facility shall correct the violation immediately, upon notice. If the violation is not corrected, the office of children and family services may take enforcement action in accordance with the applicable sections of state law.

§ 390-m. Window coverings. 1. For purposes of this section the following terms shall have the meanings set forth below:

(a) "Beaded chain" means a cord with a series of small spheres, typically made of metal or plastic.

(b) "Cord loop" means a loop formed by an inner cord that does not diminish in size when the force used to create the loop is removed.

(c) "Cordless window covering" means:

(i) a horizontal blind or cellular shade that has no draw cord and the internal lift cord runs in the slats of the horizontal blind so that the cord is incapable of forming a loop greater than 4 inches in diameter resulting in a 12-inch maximum circumference;

(ii) a Roman shade, roll-up blind, or woven shade that has no draw cord and the lift cord is completely enclosed so that it is not accessible;

(iii) a vertical blind that has a wand as its operating mechanism and does not contain any beaded chains, corded pulleys, or other cord loop operating mechanisms; and

(iv) a roller shade that does not contain a cord or beaded chain.

(d) "Draw cord" means any form of rope, strap, or string used to raise or lower a window covering.

(e) "Internal lift cord" means a cord that is contained inside the body and rails of the blind or shade.

(f) "Wand" means a rigid material used for manual operation.

2. Any child day care center as defined in paragraph (c) of subdivision one of section three hundred ninety of this title installing new or replacement window coverings shall install cordless window coverings or window coverings with inaccessible operational and inner cords.

3. Any child day care center as defined in paragraph (c) of subdivision one of section three hundred ninety of this title that has window coverings in place on the effective date of this section, shall ensure that all window and door blind cords, ropes, wires and other strangulation hazards are secured and inaccessible to children in accordance with the regulations of the office of children and family services.

4. If a child day care center fails to comply with the requirements of subdivision three of this section, the office of children and family services may require replacement of existing window coverings with

cordless window coverings or window coverings with inaccessible operational and inner cords.

§ 390-n. Child care support center; operating certificate required. 1. For purposes of this section, "child care support center" shall mean an entity operating as a child care resource and referral program as defined in title five-B of this article that is certified by the office of children and family services to place individuals as substitute caregivers at child day care centers, group family day care homes, family day care homes, or school age child care programs as defined in section three hundred ninety of this title for the purpose of providing child day care.

2. The office of children and family services shall be authorized to certify child care support centers and may, at its discretion, limit the number of operating certificates issued. The office of children and family services shall regulate and monitor child care support centers.

3. No entity may place substitute caregivers at child day care centers, group family day care homes, family day care homes, or school age child care programs unless it possesses a valid operating certificate issued by the office of children and family services.

4. Prior to placing an individual as a substitute caregiver at a child day care center, group family day care home, family day care home, or school age child care program as defined in section three hundred ninety of this title for the purpose of providing child day care, a child care support center shall verify that the substitute caregiver has met the:

(a) standards and training requirements set forth in section three hundred ninety-a of this title for child day care program employees;

(b) criminal history review and background clearance requirements of section three hundred ninety-b of this title for prospective employees of a child day care program; and

(c) any other requirements established by the regulations of the office of children and family services.

5. Any child day care program licensed or registered by the office of children and family services shall be authorized to request placement of a substitute caregiver by a child care support center in accordance with procedures established by the child care support center.

6. Operating certificates issued under this section shall remain valid unless surrendered by the child care support center or revoked by the office of children and family services. The office of children and family services may revoke an operating certificate at any time upon a determination that the child care support center has not operated in accordance with applicable state or federal law.

7. The office of children and family services shall deny an application for certification of a child care support center if the applicant had an operating certificate revoked within the two years prior to the date of application.

§ 390-o. Prohibit the use of infant walkers in child care facilities.

1. For the purposes of this section:

(a) "Infant walker" shall mean a mobile unit that enables a child to move on a horizontal surface when propelled by the child sitting or standing within the walker.

(b) "Child care facility" shall mean any child day care provider as defined in section three hundred ninety of this title or child care program as defined in article forty-seven of the New York city health code as authorized by section five hundred fifty-eight of the New York city charter.

2. (a) On or after the effective date of this section, no child care facility shall use or have on the premises any infant walker.

(b) The office of children and family services, in consultation with the city of New York department of health and mental hygiene, shall notify child care facilities of the provisions of this subdivision in plain, non-technical language. Such notice shall be given to every child care facility upon the effective date of this section or as soon as practicable thereafter, and such notice shall also be given to each

applicant for license or registration pursuant to section three hundred ninety of this title and each applicant for a permit pursuant to article forty-seven of the New York city health code.

§ 391. Violation; injunction. Violations of any provision of this title may be prohibited by injunction. Whenever the commissioner has reason to believe that any provision of this title is being violated, or is about to be violated, he may maintain and prosecute, in the name of the people of this state, an action in the supreme court for the purpose of obtaining an injunction restraining such violation.

Notwithstanding any limitation of the civil practice law and rules, such court may, on motion and affidavit, and upon proof that such violation is one which reasonably may result in injury to any person, whether or not such person is a party to such action, grant a preliminary injunction or interlocutory injunction upon such terms as may be just. No security on the part of the people of this state shall be required.

§ 392. Services for relative and non-relative kinship caregivers. 1. Notwithstanding any other provision of law to the contrary, when a local social services district is in contact with a relative or non-relative kinship caregiver or a suitable person who the district has approached about being a kinship caregiver, such district shall provide written information as described in subdivision two of this section to such caregivers or prospective suitable persons. Such information shall also be made available through the website of both the office and the district and by other appropriate means in a manner accessible to relatives and non-relatives caring for children outside of the foster care system.

2. Such information shall include but not be limited to:

a. information relating to child only grants, including but not limited to, how to apply for child only grants;

b. information about how to become a kinship foster parent and other options for care; and

c. information on how to contact the department of family assistance kinship programs and any resources funded through or operating in the local social services district for relative and non-relative kinship caregivers, including those that provide supportive services for all relative and non-relative kinship caregivers in the district.

*** § 393. Court review of placement in a qualified residential treatment program.** 1. The provisions of this section shall apply when a child is placed on or after September twenty-ninth, two thousand twenty-one and resides in a qualified residential treatment program, as defined in section four hundred nine-h of this article, and whose care and custody were transferred to the commissioner of a local social services district in accordance with section three hundred fifty-eight-a of this chapter, or whose custody and guardianship were transferred to the commissioner of a local social services district in accordance with section three hundred eighty-three-c, or three hundred eighty-four-b of this title.

2. (a) Within sixty days of the start of a placement of a child referenced in subdivision one of this section in a qualified residential treatment program, the court shall:

(i) Consider the assessment, determination, and documentation made by the qualified individual pursuant to section four hundred nine-h of this article;

(ii) Determine whether the needs of the child can be met through placement in a foster family home and, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan; and

(iii) Approve or disapprove the placement of the child in a qualified

residential treatment program. Provided that, where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate in accordance with the assessment required pursuant to section four hundred nine-h of this article, the court may only approve the placement of the child in the qualified residential treatment program if:

(A) the court finds, and states in the written order that:

(1) circumstances exist that necessitate the continued placement of the child in the qualified residential treatment program;

(2) there is not an alternative setting available that can meet the child's needs in a less restrictive environment; and

(3) that continued placement in the qualified residential treatment program is in the child's best interest; and

(B) the court's written order states the specific reasons why the court has made the findings required pursuant to clause (A) of this subparagraph.

(iv) Nothing herein shall prohibit the court from considering other relevant and necessary information to make a determination.

(b) At the conclusion of the review, if the court disapproves placement of the child in a qualified residential treatment program the court shall, on its own motion, determine a schedule for the return of the child and direct the local social services district to make such other arrangements for the child's care and welfare that is in the best interest of the child and in the most effective and least restrictive setting as the facts of the case may require. If a new placement order is necessary due to restrictions in the existing governing placement order, the court may issue a new order.

3. The court may, on its own motion, or the motion of any of the parties or the attorney for the child, proceed with the court review required pursuant to this section on the basis of the written records received and without a hearing. Provided however, the court may only proceed with the court review without a hearing pursuant to this subdivision upon the consent of all parties. Provided further, in the event that the court conducts the court review requirement pursuant to this section but does not conduct it in a hearing, the court shall issue a written order specifying any determinations made pursuant to clause

(A) of subparagraph (iii) of paragraph (a) of subdivision two of this section and provide such written order to the parties and the attorney for the child expeditiously, but no later than five days.

4. Documentation of the court's determination pursuant to this section shall be recorded in the child's case record.

5. Nothing in this section shall prohibit the court's review of a placement in a qualified residential treatment program from occurring at the same time as another hearing scheduled for such child, including but not limited to the child's permanency hearing, provided such approval is completed within sixty days of the start of such placement.

* NB There are 2 § 393's

*** § 393. Consideration of blindness during guardianship, custody or adoption proceedings.** 1. The department may not deny, decide or oppose a petition or request for guardianship, custody or visitation under this article solely on the basis that the petitioner, parent, guardian or custodian is blind. The blindness of the petitioner, parent, guardian or custodian shall be considered relevant only to the extent that the blindness affects the best interests of the child whose guardianship, custody or visitation is the subject of the petition.

2. The department shall not seek custody or guardianship of a child solely because the child's parent, guardian or custodian is blind. The blindness of the parent, guardian or custodian shall be considered relevant only to the extent that the blindness affects the best interests of the child whose guardianship, custody or visitation is the subject of the petition.

3. As used in this section, "blind" or "blindness" means:

a. vision that is 20/200 or less in the best corrected eye; or

b. vision that subtends an angle of not greater than twenty degrees in the best corrected eye.

* NB There are 2 § 393's

TITLE 1-A

CHILD CARE CREATION AND EXPANSION TAX CREDIT PROGRAM

Section 394. Short title.

394-a. Definitions.

394-b. Eligibility criteria.

394-c. Application and approval process.

394-d. Child care creation and expansion tax credit.

394-e. Allocation of credit.

394-f. Powers and duties of the commissioner.

394-g. Maintenance of records.

§ 394. Short title. This title shall be known and may be cited as the "child care creation and expansion tax credit program act".

§ 394-a. Definitions. For the purposes of this title:

1. "Certificate of tax credit" shall mean the document issued to a business entity by the office after the office has verified that the business entity has met all applicable eligibility criteria in this title. The certificate shall specify the exact amount of the tax credit under this title that a business entity may claim, pursuant to section three hundred ninety-four-d of this title, and the service year.

2. "Child care program" shall mean a child day care for which a license or registration to operate such program has been issued by the office pursuant to section three hundred ninety of this article.

3. "Child care rate" shall mean the weekly child care subsidy market rates, based on the eightieth percentile of the 2021-22 New York state child care market rate survey, for infant and toddler care provided by a licensed or registered child care program, as reflected in the 2022 child care market rate survey report published by the office in

compliance with section 98.45 of title forty-five of the code of federal regulations.

4. "Child care seats" shall mean the maximum number of children to be allowed on the premises of a child care program at any time that such program is in operation as specified on the license or registration issued for such program by the office.

5. "Creates child care" shall mean the making available of child care seats in a child care program by a business entity, directly or through a third-party, for employees of such business entity, where such child care program was not available prior to April first, two thousand twenty-three, provided that the costs imposed on such employees for such child care program do not exceed forty percent of the child care rate.

6. "Commissioner" shall mean commissioner of the office of children and family services.

7. "Expands child care" shall mean the increase in the number of child care seats in a child care program made available by a business entity, directly or through a third party, for employees of such business entity, provided that such increase requires a new or amended license or registration issued by the office pursuant to section three hundred ninety of this article on or after April first, two thousand twenty-three, and, provided further, that the costs imposed on such employees for such child care program do not exceed forty percent of the child care rate.

8. "Occupied" shall mean, for each service year in which a child care program is in operation, the average daily number of children in attendance on the premises of such child care program.

9. "Office" shall mean the office of children and family services.

10. "Service year" shall mean the twelve-month period, or portion thereof, commencing on January first and ending on December thirty-first.

§ 394-b. Eligibility criteria. 1. To be eligible for a tax credit under the child care creation and expansion tax credit program, a business entity must:

- (a) be a business entity that is required to file a tax return pursuant to article nine-A, twenty-two or thirty-three of the tax law;
- (b) be a child care program, or contract with such child care program, as defined in this title that is licensed or registered pursuant to section three hundred ninety of this article;
- (c) create or expand child care seats, directly or through a third party, for the employees of such business entity on or after April first, two thousand twenty-three and before January first, two thousand twenty-five;
- (d) operate a business location in New York state;
- (e) be in substantial compliance with any child care licensing laws and regulations related to the entity's business sector or other laws and regulations as determined by the commissioner; and
- (f) not owe past due state taxes or local property taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

§ 394-c. Application and approval process. 1. A business entity must submit a complete application as prescribed by the commissioner by the thirty-first of January after the end of the service year.

2. The commissioner shall establish procedures for a business entity to submit applications. As part of the application, each business entity must:

- (a) provide evidence in a form and manner prescribed by the commissioner of their business eligibility;
- (b) provide the license or registration issued to the business entity, directly or through a third party, by the office to operate a child care program indicating the number of child care seats created or, in the case of a child care program that has experienced an expansion of child care seats, the license or registration issued by the office

demonstrating such expansion;

(c) provide evidence in a form and manner prescribed by the commissioner establishing:

(i) the total number of child care seats that were occupied during the service year;

(ii) of such total number of child care seats that were occupied, the number of infant child care seats that were occupied and the number of toddler child care seats that were occupied;

(iii) that, to the extent the business entity, directly or through a third party, has expanded child care, the number of child care seats in existence before such expansion and the number of such child care seats that were occupied before such expansion; and

(iv) that the costs imposed on the business entity's employees for such child care program do not exceed forty percent of the child care rate;

(d) agree to allow the department of taxation and finance to share the business entity's tax information relevant to the administration of this title with the office. However, any information shared as a result of this title shall not be available for disclosure or inspection under the state freedom of information law;

(e) allow the office and its agents access to any and all books and records the office may require to monitor compliance; and

(f) agree to provide any additional information required by the office relevant to this title.

3. After reviewing a business entity's completed final application and determining that the business entity meets the eligibility criteria as set forth in this title, the office may issue to that business entity a certificate of tax credit, which shall set forth the amount of the credit that may be claimed and the service year.

§ 394-d. Child care creation and expansion tax credit. 1. A business entity in the child care creation and expansion tax credit program that meets the eligibility requirements of section three hundred ninety-four-b of this title may be eligible to claim a credit for the portion of the service year in which the child care program was in

operation, equal to the sum of: (a) the product of the number of infant child care seats that have been created or expanded and twenty percent of the child care rate for such infant child care seats and (b) the product of the number of toddler child care seats that have been created or expanded and twenty percent of the child care rate for such toddler child care seats; provided that such infant and toddler child care seats are child care seats that are occupied. Notwithstanding the preceding sentence, a credit shall not be allowed for more than twenty-five child care seats that are occupied, and the amount of such credit may be reduced as a result of an allocation of available funds, as described in section three hundred ninety-four-e of this title.

2. The credit shall be allowed as provided in section forty-eight, subdivision fifty-nine of section two hundred ten-B, subsection (ooo) of section six hundred six and subdivision (ee) of section fifteen hundred eleven of the tax law.

§ 394-e. Allocation of credit. The aggregate amount of tax credits allowed under this title, subdivision fifty-nine of section two hundred ten-B, subsection (ooo) of section six hundred six and subdivision (ee) of section fifteen hundred eleven of the tax law shall be twenty-five million dollars each year during the period two thousand twenty-three and two thousand twenty-four. Such aggregate amount of credits shall be allocated by the office on a pro rata basis to each business entity that demonstrates eligibility pursuant to section three hundred ninety-four-b of this title.

§ 394-f. Powers and duties of the commissioner. 1. The commissioner may promulgate regulations establishing an application process and eligibility criteria, which will be applied consistent with the purposes of this title so as not to exceed the annual cap on tax credits set forth in this title, that, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to eligible businesses. Such certificate shall contain such information as required by the department of taxation and finance.

3. The commissioner shall solely determine the eligibility of any business entity applying for entry into the program and shall remove any business entity from the program for failing to meet any of the requirements set forth in section three hundred ninety-four-b of this title.

§ 394-g. Maintenance of records. Each business entity participating in the program shall keep all relevant records for the duration of their participation in the program for at least three years.

TITLE 2

POWERS AND DUTIES OF PUBLIC WELFARE OFFICIALS

- Section 395. Responsibility of public welfare districts for the welfare of children.
396. Health and welfare services to all children.
397. Powers and duties of social services officials in relation to children.
398. Additional powers and duties of commissioners of public welfare and certain city public welfare officers in relation to children.
- 398-a. Standards of payment for foster care.
- 398-b. Transition to managed care.
- 398-c. Powers and duties of the commissioner in relation to children.
- 398-d. Child welfare services community demonstration projects.
- 398-e. Eligibility for protective services and residential services for victims of domestic violence.
- 398-f. Duty to provide luggage to children in foster care.
399. Children discharged from state institutions.

- 400. Removal of children.
- 401. Births to inmates of public homes.
- 402. Children forbidden in public homes.
- 403. The religious faith of children and minors.
- 404. Juvenile justice services close to home initiative.

§ 395. Responsibility of public welfare districts for the welfare of children. A public welfare district shall be responsible for the welfare of children who are in need of public assistance and care, support and protection, residing or found in its territory, insofar as not inconsistent with the jurisdiction of a family court. Such assistance and care shall be administered either directly by the public welfare official charged therewith, or by another public welfare official acting on his behalf by and pursuant to the provisions of this chapter, or through an authorized agency as defined by this chapter.

§ 396. Health and welfare services to all children. All public welfare districts and towns, shall provide children who attend schools other than public with all or any of the health and welfare services and facilities, including but not limited to health, surgical, medical, dental and therapeutic care and treatment, and corrective aids and appliances, authorized by law and now granted or hereafter made available by the public welfare district or districts and/or towns for or to children in the public schools in so far as these services and facilities may be requested by the authorities of the schools other than public. Any such services or facilities shall be so provided notwithstanding any provision of any charter or other provision of law inconsistent herewith.

§ 397. Powers and duties of social services officials in relation to children. All social services officials responsible for the administration of safety net assistance to families shall, in relation to all children in such families other than delinquent children, persons in need of supervision, mentally disabled children, physically

handicapped children and children born out of wedlock who shall be cared for under the provisions of the following section, have powers and perform duties as follows:

1. As to destitute children:

(a) Investigate the family circumstances of each child reported as destitute in order to determine what care, supervision or treatment, if any, such child requires.

(b) Administer and supervise relief to families with destitute children when such families are unable to care for such children and relief is necessary to prevent the separation of children from their parents.

(c) Furnish children, whose parents or guardians are unable to do so, with suitable clothing, shoes, books, food and other necessities to enable them to attend upon instruction as required by law.

2. As to neglected and abused children:

(a) Investigate complaints of neglect and abuse of children and offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stabilize family life wherever possible.

(b) Bring such case when necessary before the family court for adjudication.

(c) Institute proceedings in a court of competent jurisdiction against a parent or adult for neglect or abuse of a child.

3. Provide any necessary medical or hospital care for such children when responsible for the provision of such care under section sixty-nine.

4. The provisions of this section shall not be deemed to confer on social services officials responsible only for the authorization of safety net assistance or of safety net assistance and hospital care, any powers and duties in relation to destitute and neglected children except as follows:

(a) As to destitute children:

(1) Authorize relief to families with destitute children when such

families are unable to care for such children and relief is necessary to prevent the separation of children from their parents.

(2) Furnish children, whose parents or guardians are unable to do so, with suitable clothing, shoes, books, food and other necessities to enable them to attend upon instruction as required by law.

(b) As to neglected and abused children:

Report to the county commissioner any complaint they may receive of neglect and abuse of children.

(c) Provide any necessary medical care or hospital care for such children when responsible for the provision of such care under section sixty-nine.

§ 398. Additional powers and duties of commissioners of public welfare and certain city public welfare officers in relation to children.

Commissioners of public welfare and city public welfare officers responsible under the provisions of a special or local law for the children hereinafter specified shall have powers and perform duties as follows:

1. As to destitute children:

(a) offer preventive services in accordance with section four hundred nine-a of this article when necessary to avert an impairment or disruption of a family which could result in the placement of the child in foster care;

(b) report to the local criminal justice agency and to the statewide central register for missing children as described in section eight hundred thirty-seven-e of the executive law such relevant information as required on a form prescribed by the commissioner of the division of criminal justice services, in appropriate instances; and

(c) assume charge of and provide care and support for any child who is a destitute child pursuant to paragraph (a) of subdivision three of section three hundred seventy-one of this article who cannot be properly cared for in his or her home, and if required, petition the family court to obtain custody of the child in accordance with article ten-C of the family court act.

2. As to neglected, abused or abandoned children:

(a) Investigate the alleged neglect, abuse or abandonment of a child, offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stabilize family life wherever possible and, if necessary, bring the case before the family court for adjudication and care for the child until the court acts in the matter and, in the case of an abandoned child, shall promptly petition the family court to obtain custody of such child.

(b) Receive and care for any child alleged to be neglected, abused or abandoned who is temporarily placed in his care by the family court pending adjudication by such court of the alleged neglect, abuse or abandonment including the authority to establish, operate, maintain and approve facilities for such purpose in accordance with the regulations of the department; and receive and care for any neglected, abused or abandoned child placed or discharged to his care by the family court.

(c) Any facility designated as of the effective date of this act shall not be disapproved except after consultation with the designating appellate division.

(d) The local social services department shall list all facilities approved under this article for the temporary custody and care of children remanded by the family court and shall file a copy of that list periodically with the clerk of the family court in each county in the judicial district in which the facility is located.

(e) Report to the local registrar of vital statistics of the district in which the child was found the sex, color, approximate date of birth, place of finding, and the name assigned to any child who may be found whose parents are unknown, within ten days whenever possible after the child is found, on a form prescribed therefor by the state commissioner of health, and report the subsequent identification of any such child to the state commissioner of health; provided, however, that in the city of New York such form shall be prescribed by, and such report shall be made to, the department of health.

(f) Report to the local criminal justice agency and to the statewide central register for missing children as described in section eight hundred thirty-seven-e of the executive law such information as required on a form prescribed by the commissioner of the division of criminal

justice services within forty-eight hours after an abandoned child is found.

3. As to delinquent children and persons in need of supervision:

(a) Investigate complaints as to alleged delinquency of a child.

(b) Bring such case of alleged delinquency when necessary before the family court.

(c) Receive within fifteen days from the order of placement as a public charge any delinquent child committed or placed or person in need of supervision placed in his or her care by the family court provided, however, that the commissioner of the social services district with whom the child is placed may apply to the state commissioner or his or her designee for approval of an additional fifteen days, upon written documentation to the office of children and family services that the youth is in need of specialized treatment or placement and the diligent efforts by the commissioner of social services to locate an appropriate placement.

* 3-a. As to delinquent children:

(a)(1) Conditionally release any juvenile delinquent placed with the district to aftercare whenever the district determines conditional release to be consistent with the needs and best interests of such juvenile delinquent, that suitable care and supervision can be provided, and that there is a reasonable probability that such juvenile delinquent can be conditionally released without endangering public safety; provided, however, that such conditional release shall be made in accordance with the regulations of the office of children and family services, and provided further that no juvenile delinquent while absent from a facility or program without the consent of the director of such facility or program shall be conditionally released by the district solely by reason of the absence.

(2) It shall be a condition of such release that a juvenile delinquent so released shall continue to be the responsibility of the social services district for the period provided in the order of placement.

(3) The social services district may provide clothing, services and other necessities for any conditionally released juvenile delinquent, as may be required, including medical care and services not provided to such juvenile delinquent as medical assistance for needy persons

pursuant to title eleven of article five of this chapter.

(4) The social services district, pursuant to the regulations of the office of children and family services, may cause a juvenile delinquent to be returned to a facility operated and maintained by the district, or an authorized agency under contract with the district, at any time within the period of placement, where there is a violation of the conditions of release or a change of circumstances.

(5) Juvenile delinquents conditionally released by a social services district may be provided for as follows:

(i) If, in the opinion of the social services district, there is no suitable parent, relative or guardian to whom a juvenile delinquent can be conditionally released, and suitable care cannot otherwise be secured, the district may conditionally release such juvenile delinquent to the care of any other suitable person; provided that where such suitable person has no legal relationship with the juvenile, the district shall advise such person of the procedures for obtaining custody or guardianship of the juvenile.

(ii) If a conditionally released juvenile delinquent is subject to article sixty-five of the education law or elects to participate in an educational program leading to a high school diploma, he or she shall be enrolled in a school or educational program leading to a high school diploma following release, or, if such release occurs during the summer recess, upon the commencement of the next school term. If a conditionally released juvenile delinquent is not subject to article sixty-five of the education law, and does not elect to participate in an educational program leading to a high school diploma, steps shall be taken, to the extent possible, to facilitate his or her gainful employment or enrollment in a vocational program following release.

(b) When a juvenile delinquent placed with the social services district is absent from placement without consent, such absence shall interrupt the calculation of time for his or her placement. Such interruption shall continue until such juvenile delinquent returns to the facility or authorized agency in which he or she was placed. Provided, however, that any time spent by a juvenile delinquent in custody from the date of absence to the date placement resumes shall be credited against the time of such placement provided that such custody:

(1) was due to an arrest or surrender based upon the absence; or

(2) arose from an arrest or surrender on another charge which did not culminate in a conviction, adjudication or adjustment.

(c) In addition to the other requirements of this section, no juvenile delinquent placed with a social services district operating an approved juvenile justice services close to home initiative pursuant to section four hundred four of this chapter pursuant to a restrictive placement under the family court act shall be released except pursuant to section 353.5 of the family court act.

* NB Repealed March 31, 2028

4. As to mentally disabled and physically handicapped children:

(a) Obtain admission to state and other suitable schools, hospitals, other institutions, or care in their own homes or in family free or boarding homes or in agency boarding homes or group homes for such children in accordance with the provisions of the mental hygiene law, education law and acts relating to the family court.

(b) Maintain supervision over such disabled or physically handicapped children as are not in institutions, hospitals or schools or under the jurisdiction of the family court.

5. As to children born out of wedlock:

(a) Provide care in a family free or boarding home, in an agency boarding home or group home or in an institution for any child born out of wedlock and for his mother as for any other person in need of public assistance and care during pregnancy and during and after delivery, when in the judgment of such social services official needed care cannot be provided in the mother's own home. However, nothing in this section or elsewhere in this chapter contained shall be construed to make any such child or his mother ineligible for such care away from home, regardless of ability or liability to pay therefor; provided, however, that except as hereinafter provided, it shall rest in the discretion of the social services official, in view of all the facts and circumstances present in each case, to determine whether or not to require such mother, or any other person or persons liable by law to contribute to the support thereof, to pay all or any part of such cost, pursuant to the provisions of this section or any other section of this chapter. Any inconsistent provision of law notwithstanding, the acceptance by a private authorized

adoption agency of an absolute surrender of a child born out of wedlock from the mother of such child shall relieve her from any and all liability for the support of such child. When in the judgment of a social services official needed care cannot be provided in the home of a minor pregnant with an out of wedlock child, and he has made a determination pursuant to subdivision one of section one hundred thirty-two of this chapter not to make an investigation of the circumstances of such minor and not to require support from persons liable therefor, the authorization of such social services official of necessary medical care for such minor shall have the same force and effect as a consent executed by a parent or guardian of such minor.

(b) Institute proceedings to establish paternity and secure the support and education of any child born out of wedlock or make a compromise with the father of such child, in accordance with the provisions of law, relating to children born out of wedlock.

(c) Hold and disburse the money received from such a compromise or pay it to the mother if she gives security for the support of the child.

(d) When practicable, require the mother to contribute to the support of the child.

6. As to all foregoing classes of children:

(a) Investigate the family circumstances of each child reported to him as destitute, neglected, abused, delinquent, disabled or physically handicapped in order to determine what assistance and care, supervision or treatment, if any, such child requires.

(b) Provide for expert mental and physical examination of any child whom he has reason to suspect of mental or physical disability or disease and pay for such examination from public funds, if necessary.

(c) Provide necessary medical or surgical care in a suitable hospital, sanatorium, preventorium or other institution or in his own home for any child needing such care and pay for such care from public funds, if necessary. However, in the case of a child or minor who is eligible to receive care as medical assistance for needy persons pursuant to title eleven of article five of this chapter, such care shall be provided pursuant to the provisions of that title.

(d) Ascertain the financial ability of the parents of children who become public charges and collect toward the expense of such child's

care such sum as the parents are able to pay.

(e) Collect from parents whose children have been discharged to his care by the family court such sums as they are ordered to pay for the maintenance of such children and report any failure to comply with such order to such court.

(f) When in his judgment it is advisable for the welfare of the child, accept the surrender of a child by an instrument in writing in accordance with the provisions of this chapter. Any inconsistent provision of law notwithstanding, the acceptance by the social services official of a surrender of a child born out of wedlock from the mother or father of such child shall relieve the parent executing such surrender from any and all liability for the support of such child.

(g) (1) Place children in its care and custody or its custody and guardianship, in suitable instances, in supervised settings, family homes, agency boarding homes, group homes or institutions under the proper safeguards. Such placements can be made either directly, or through an authorized agency, except that, direct placements in agency boarding homes or group homes may be made by the social services district only if the office of children and family services has authorized the district to operate such homes in accordance with the provisions of section three hundred seventy-four-b of this article and only if suitable care is not otherwise available through an authorized agency under the control of persons of the same religious faith as the child. Where such district places a child in a supervised setting, agency boarding home, group home or institution, either directly, or through an authorized agency, the district shall certify in writing to the office of children and family services, that such placement was made because it offers the most appropriate and least restrictive level of care for the child, and, is more appropriate than a family foster home placement, or, that such placement is necessary because there are no qualified foster families available within the district who can care for the child. If placements in agency boarding homes, group homes or institutions are the result of a lack of foster parents within a particular district, the office of children and family services shall assist such district to recruit and train foster parents. Placements shall be made only in institutions visited, inspected and supervised in accordance with title three of article seven of this chapter and

conducted in conformity with the applicable regulations of the supervising state agency in accordance with title three of article seven of this chapter. With the approval of the office of children and family services, a social services district may place a child in its care and custody or its custody and guardianship in a federally funded job corps program and may receive reimbursement for the approved costs of appropriate program administration and supervision pursuant to a plan developed by the department and approved by the director of the budget.

(2) A social services district may place a child in its care and custody or its custody and guardianship in a home or facility operated or licensed by any office of the department of mental hygiene, subject to the relevant provisions of the mental hygiene law and the admission criteria of the facility. The director of the budget may authorize such transfers of appropriations under the provisions of section fifty of the state finance law as may be necessary to secure federal reimbursement for such placements.

(3) (i) Effective sixty days after the enactment of this subparagraph, there is hereby established within a social services district with a population in excess of two million a two-year demonstration project which affords authorized agencies with which foster children are placed enhanced administrative flexibility. Pursuant to such demonstration project, an authorized agency with which the social services district has placed a child shall have the authority to:

(A) give all necessary consents to the discharge of the child from foster care when such authorized agency has submitted a written request for approval of such discharge to the social services official and the social services official has not disapproved such discharge within thirty days of receiving such request;

(B) change a goal for the child when such authorized agency has submitted a written request for approval of such change of goal to the social services official and the social services official has not disapproved such goal within thirty days of receiving such request;

(C) commence a proceeding to free the child for adoption when such authorized agency has submitted a written request for approval of the commencement of such proceeding to the social services official, if the social services official has not disapproved such commencement within thirty days of receiving such request, in which case such a request

shall be deemed approved; and

(D) consent to the adoption of a child whose custody and guardianship, or of a child where such child's parents are both deceased, or where one parent is deceased and the other parent is not entitled to notice pursuant to sections one hundred eleven and one hundred eleven-a of the domestic relations law, and whose care and custody, has been transferred to a social services district and who has been placed by the social services official with the authorized agency when the authorized agency has submitted a written request for approval to consent to the adoption, if the social services district has not disapproved the request to consent to adoption within sixty days after its submission, in which case such request shall be deemed approved and the authorized agency may give all necessary consent to the adoption of the child.

(ii) Nothing herein shall result in the transfer of care and custody or custody and guardianship of a child from the social services official to the authorized agency.

(iii) Within three months of the conclusion of the demonstration project, such social services district shall issue a report to the department regarding the effectiveness of the demonstration project. Such report shall include recommendations for possible statutory and regulatory amendments in relation to the administration of foster care.

(4) A social services district may place a child in its care and custody or its custody and guardianship in a family home certified by the division for youth, which shall not include a group home. Such placements shall be subject to the relevant provisions of this chapter, the executive law and the admission criteria of the home.

(h) Supervise children who have been cared for away from their families until such children become twenty-one years of age or until they are discharged to their own parents, relatives within the third degree or guardians, or adopted, provided, however, that in the case of a child who is developmentally disabled as such term is defined in section 1.03 of the mental hygiene law, emotionally disturbed or physically handicapped, and who is receiving care in a group home, agency boarding home or any child care facility operated by an authorized agency with a capacity of thirteen or more children, and who is in receipt of educational services and under the care and custody of a local department of social services, the commissioner of the office of

children and family services shall allow such child who reaches the age of twenty-one during the period commencing on the first day of September and ending on the thirtieth day of June to be entitled to continue in such program until the thirtieth day of June or until the termination of the school year, whichever shall first occur.

(j) Permit children and minors who are being cared for away from their own homes as public charges to retain the maximum amount of their monthly earned income for future identifiable needs in accordance with the regulations of the department and consistent with the federal law applicable to the treatment of income and resources under the aid to families with dependent children program.

(k) In accordance with regulations of the department, provide suitable vocational training through any institution licensed or approved by the state education department, for any minor in his care who demonstrates to his satisfaction the possession of talent, aptitude and ability necessary to benefit therefrom, provided such minor could not otherwise obtain such training. Expenditures may be made for tuition, books, supplies, and all other necessary items to enable such minor to obtain such training.

(l) In accordance with regulations of the department, provide maintenance in a summer camp for children and minors who are being cared for away from their own homes as public charges, when in his judgment it is advisable for the welfare of such children and minors.

(n) When it is in the best interest of the child, place a child who is being returned to foster care, following an interruption in care, or a child who is being returned to a family boarding home following placement in a foster care facility with the foster care parents with whom that child was last placed, notwithstanding the provisions of subdivisions three and four of section three hundred seventy-eight of this chapter. When it is in the best interests of the minor parent and the minor parent's child or children, place the minor parent who is being returned to foster care following an interruption in care, and the minor parent's child or children or the minor parent who is being returned to a family boarding home following placement in a foster care facility and the minor parent's child or children with the foster care parents with whom the minor parent was last placed, notwithstanding the provisions of subdivisions three and four of section three hundred

seventy-eight of this chapter.

(o) Compliance with a court order enforcing visitation rights of a non-custodial parent or grandparent pursuant to part eight of article ten of the family court act, subdivision ten of section three hundred fifty-eight-a or paragraph (d) of subdivision two of section three hundred eighty-four-a of this chapter, and responsibility for the return of such child after visitation so ordered.

* (p) Provide respite care for children who have special needs as described in subdivision fifteen of this section including, but not limited to, those children who are diagnosed as having AIDS or HIV related disease. For the purposes of this paragraph, respite care shall mean the provision of temporary care and supervision of children on behalf of a foster parent of a child with such special needs. Such care may be provided by a foster family boarding home, an agency operated boarding home, a group home, an institution or by an authorized staff member of such programs or other provider approved by the local district based on the individual circumstances of the caregiver and the needs of the child, for up to three consecutive weeks but no more than seven weeks in a calendar year. The department shall, by regulation, establish standards for respite care and training for the providers of such care.

* NB There are 2 par (p)'s

* (p) Consistent with the provisions of this chapter, provide necessary care, services and supervision including medical care, to a child placed in foster care pursuant to subparagraph (ii) of paragraph (a) of subdivision two of section ten hundred seventeen of the family court act, and reimbursement therefor to relatives of such child as approved foster parents with whom such child is residing.

* NB There are 2 par. (p)'s

7. Notwithstanding any inconsistent provisions of law, no city forming part of a county public welfare district may hereafter assume any of the powers, duties and responsibilities mentioned in this section. However, this subdivision shall not be deemed or construed to prohibit a public welfare officer of a city forming part of a county public welfare district from exercising and performing on behalf of the county commissioner of public welfare, pursuant to the provisions of title three-a of article three, any of the powers and duties mentioned in this

section. A city forming part of a county public welfare district which heretofore assumed or upon which was heretofore imposed the responsibility for providing any or all of the assistance, care and service mentioned in this section, shall hereafter continue to have such responsibility, provided, however, that the continuance of such responsibility shall be consistent with the powers, duties and responsibilities of such city under and pursuant to the provisions of title three-a of article three.

8. A public welfare official who is authorized to place children or minors in homes or institutions pursuant to provisions of this section shall have the power to place children or minors in a public institution for children.

9. A social services official shall have the same authority as a peace officer to remove a child from his home without an order of the family court and without the consent of the parent or person responsible for such child's care if the child is in such condition that his continuing in the home presents an imminent danger to the child's life or health. When a child is removed from his home pursuant to the provisions of this subdivision, the social services official shall promptly inform the parent or person responsible for such child's care and the family court of his action.

10. Any provision of this chapter or any other law notwithstanding, where a foster child for whom a social services official has been making foster care payments is in attendance at a college or university away from his or her foster family boarding home, group home, agency boarding home or institution, and residing in a supervised setting or other approved location, a social services official may make foster payments, at a rate to be developed by the office of children and family services, to such college or university, provider of room and board, or youth, as appropriate, in lieu of payment to the foster parents or authorized agency, for the purpose of room and board, if not otherwise provided. Such rate shall be no lower than the rate paid for a child's care in a foster family boarding home.

11. In the case of a child who is adjudicated a person in need of supervision or a juvenile delinquent and is placed by the family court with the division for youth and who is placed by the division for youth with an authorized agency pursuant to court order, the social services official shall make expenditures in accordance with the regulations of the department for the care and maintenance of such child during the term of such placement subject to state reimbursement pursuant to this title, or article nineteen-G of the executive law in applicable cases.

12. A social services official shall be permitted to place persons adjudicated in need of supervision or delinquent, and alleged persons to be in need of supervision in detention pending transfer to a placement, in the same foster care facilities as are providing care to destitute, neglected, abused or abandoned children. Such foster care facilities shall not provide care to a youth in the care of a social services official as a convicted juvenile offender.

13. (a) In the case of a child with a handicapping condition who is placed, pursuant to this chapter, in a foster care agency or institution located outside the state, and who attains the age of eighteen, the social services official shall:

(i) determine whether such child will need services after the age of twenty-one, and, if such need exists;

(ii) assess the nature of the services required;

(iii) notify the parent or guardian of such child's need for services; and

(iv) upon the written consent of the parent or guardian, and notwithstanding section three hundred seventy-two of this article, submit a report on the child's need for services after age twenty-one to the department for planning purposes.

(b) Upon the written consent of the parent or guardian, the department shall submit the report received pursuant to paragraph (a) of this subdivision to the council on children and families.

(c) When a child's report is submitted to the council on children and families pursuant to this subdivision, the council shall cooperate with adult service providers, such as the department of social services, the office for people with and developmental disabilities, the office of

mental health and the office of vocational rehabilitation of the education department in planning and coordinating such child's return to New York state for adult services. The council shall arrange with the appropriate state agency for the development of a recommendation of all appropriate in-state programs operated, licensed, certified or authorized by such agency and which may be available when such child attains the age of twenty-one. Such recommendation of all programs shall be made available to the parent or guardian of such child at least six months before such child attains the age of twenty-one. All records, reports and information received, compiled or maintained by the council pursuant to this subdivision shall be subject to the confidentiality requirements of the department.

14. (a) In the case of a child who is developmentally disabled as such term is defined in section 1.03 of the mental hygiene law, emotionally disturbed or physically handicapped and who is receiving care in a group home, agency boarding home, or any child care facility operated by an authorized agency with a capacity of thirteen or more children, who attains the age of eighteen and who will continue in such care after the age of eighteen, or who is placed in such care after the age of eighteen, the social services official shall notify the parent or guardian of such child that such care will terminate when such child attains the age of twenty-one provided, however, that any such child in receipt of educational services and under the care and custody of a local department of social services who reaches the age of twenty-one during the period commencing on the first day of September and ending on the thirtieth day of June shall be entitled to continue in such program until the thirtieth day of June or until the termination of the school year, whichever shall first occur. Such notice shall be in writing and shall describe in detail the parent's or guardian's opportunity to consent to having such child's name and other information forwarded in a report to the commissioner of mental health, commissioner of the office for people with developmental disabilities, commissioner of education or commissioner of the office of children and family services or their designees for the purpose of determining whether such child will likely need services after the age of twenty-one and, if so, recommending possible adult services.

(b) Upon the written consent of the parent or guardian, and notwithstanding section three hundred seventy-two of this article, the social services official shall submit a report on such child's possible need for services after age twenty-one to the commissioner of mental health, commissioner of the office for people with developmental disabilities, commissioner of social services or commissioner of education or their designees for the development of a recommendation pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred ninety-eight-c of this title or subdivision ten of section four thousand four hundred three of the education law. The social services official shall determine which commissioner shall receive the report by considering the child's handicapping condition. If the social services official determines that the child will need adult services from the department and such social services official is the commissioner's designee pursuant to this subdivision and section three hundred ninety-eight-c of this title, such social services official shall perform the services described in section three hundred ninety-eight-c of this title.

(c) A copy of such report shall also be submitted to the department at the same time that such report is submitted to the commissioner of mental health, commissioner of the office for people with developmental disabilities or commissioner of education or their designees.

(d) When the social services official is notified by the commissioner who received the report that such state agency is not responsible for determining and recommending adult services for the child, the social services official shall forward the report to another commissioner; or, if the social services official determines that there exists a dispute between state agencies as to which state agency has the responsibility for determining and recommending adult services, the social services official may forward the report to the council on children and families for a resolution of such dispute.

(e) The social services official shall prepare and submit an annual report to the department on October first, nineteen hundred eighty-four and thereafter on or before October first of each year. Such annual report shall contain the number of cases submitted to each commissioner pursuant to paragraph (b) of this subdivision, the type and severity of the handicapping condition of each such case, the number of notices

received which deny responsibility for determining and recommending adult services, and other information necessary for the department and the council on children and families to monitor the need for adult services, but shall not contain personally identifying information. The department shall forward copies of such annual reports to the council on children and families. All information received by the council on children and families pursuant to this paragraph shall be subject to the confidentiality requirements of the department.

15. (a) In the case of a child who has special needs due to a high level of disturbed behavior, emotional disturbance or physical or health needs as determined by the district in accordance with the rules and regulations of the department and who has been placed with a therapeutic foster parent, the social services official shall make available periodic respite care services for such parent, necessary consultation services between the therapeutic foster care parent and professionals familiar with the special needs of the child and such other support services as are reasonably necessary to prevent placement of the child in a group home, an agency operated boarding home or an institution.

(b) Prior to placement of a child who has been determined to have special needs with a therapeutic foster parent, the social services official shall require such foster parent to complete an approved training program. The department shall not provide enhanced reimbursement for such placement unless the social services official certifies that the foster parent has successfully completed an approved training program.

(c) A social services official shall require that the family services plan developed pursuant to section four hundred nine-e of this article for a child placed with a therapeutic foster parent include a treatment plan prepared in consultation with the therapeutic foster parent and approved by the social services official.

16. Notwithstanding any provision of law to the contrary, with regard to the placement of all categories of foster children, the social services official or the voluntary authorized agency under contract with such official must consider giving preference to placement of a child with an adult relative over a non-related caregiver, provided that the

relative caregiver meets relevant child welfare standards.

§ 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

§ 398-b. Transition to managed care. 1. Notwithstanding any inconsistent provision of law to the contrary and subject to the availability of federal financial participation, the commissioner is authorized to make grants up to a gross amount of five million dollars for state fiscal year two thousand fourteen--fifteen and up to a gross amount of fifteen million dollars for state fiscal year two thousand fifteen--sixteen to facilitate the transition of foster care children placed with voluntary foster care agencies to managed care. The use of such funds may include providing training and consulting services to

voluntary agencies to assess readiness and make necessary infrastructure and organizational modifications, collecting service utilization and other data from voluntary agencies and other entities, and making investments in health information technology, including the infrastructure necessary to establish and maintain electronic health records. Such funds shall be distributed pursuant to a formula to be developed by the commissioner of health, in consultation with the commissioner of the office of children and family services. In developing such formula the commissioners may take into account size and scope of provider operations as a factor relevant to eligibility for such funds. Each recipient of such funds shall be required to document and demonstrate the effective use of funds distributed herein. If federal financial participation is unavailable, then the nonfederal share of payments pursuant to this subdivision may be made as state grants.

2. Data provided by voluntary foster care agencies shall be compliant with the health insurance portability and accountability act, and shall be transmitted securely using eMEDS or other mechanism to be determined by the department of health. Such data may be used by the department of health to establish rates of payment for managed care organizations for services provided to children in foster care. In establishing such rates the commissioner of health shall also take into account care coordination services that will continue to be provided by the voluntary foster care agencies.

3. The commissioner of health shall issue a report to be made public on the department of health's website. Such report shall conform to the requirements of subdivision five of section ninety-two of part H of chapter fifty-nine of the laws of two thousand eleven.

§ 398-c. Powers and duties of the commissioner in relation to children. 1. The commissioner shall determine whether a child, whose report is submitted to the department pursuant to subparagraph five of paragraph b of subdivision one of section forty-four hundred two of the education law or subdivision thirteen of section three hundred

ninety-eight of this article, will likely need adult services and, if such need will likely exist, develop a recommendation of all appropriate programs authorized or operated by the department which may be available when the child attains the age of twenty-one. If necessary and appropriate, the commissioner may conduct an evaluation of the child to determine if adult services will be necessary. Such recommendation of all programs shall be made available to the parent or guardian of such child as soon as practicable but no later than six months before such child attains the age of twenty-one.

2. If the commissioner determines pursuant to subdivision one of this section, that such child will not require adult services, the commissioner shall notify the child's parent or guardian in writing of such determination. Such notice shall be given as soon as practicable but no later than six months before the child attains the age of twenty-one.

3. Notwithstanding subdivisions one and two of this section, the commissioner may determine that the department is not responsible for determining and recommending adult services for such child. When such a determination is made it shall be made as soon as practicable after receiving the report and the commissioner shall promptly notify in writing the committee on special education, multidisciplinary team or social services official who sent the report that such determination has been made. Such notice shall state the reasons for the determination and may recommend a state agency which may be responsible for determining and recommending adult services.

4. Nothing in this section shall be construed to create an entitlement to adult services.

5. A designee of the commissioner may carry out the functions of the commissioner described in this section.

§ 398-d. Child welfare services community demonstration projects. 1. The legislature finds that the centralized delivery of child protective

services, preventive services, adoption services and foster care services in a social service district with a population of more than two million hinders their effective delivery and adds unnecessary costs. Numerous studies have recommended that such services serve small areas, be located in such areas, and be integrated. Such relocation will: give caseworkers greater knowledge of their assigned community, the residents of that community and the availability of community-based services; increase the availability of caseworkers; reduce travel time for caseworkers; enable children in foster care to remain in their own communities and schools and maintain their friendships; enable children in foster care to have greater visitation with their parents; provide for more effective delivery of preventive services; and expedite adoptions and otherwise reduce the amount of time children spend in foster care.

The relocation of child welfare service delivery to the community sites will strengthen efforts to provide a wide range of community-based early intervention programs including, but not limited to, school-based health clinics and community schools, thereby ensuring the continued development of a critical mass of community services.

2. No later than March first, nineteen hundred ninety-six, a social service district with a population in excess of two million shall implement at least three demonstration projects for a period of at least two years to provide child welfare services on a community level to improve the delivery of child welfare services, increase adoptions and reduce the rate of foster care placements. These projects shall be located in and serve community school districts which have high rates of: children at risk of becoming a part of the foster care system, poverty, households on public assistance, juvenile delinquency, and unemployment. Such projects shall provide foster care, preventive, adoption and child protective services as required by this article.

3. In proposed demonstration areas, child welfare services must be coordinated with community schools, school health clinics, and other relevant programs to provide and administer the most efficient services. In one demonstration area, the district shall use a caseworker to client

ratio equal to the preferred national average of one to fourteen.

4. A report evaluating such projects shall be presented no later than June first, nineteen hundred ninety-eight, to the governor, the department and the respective chairpersons of the assembly children and families committee, the senate children and families committee, the assembly ways and means committee, and the senate finance committee. Such report shall include:

(a) the number of children and families who received preventive services, child protective services and foster care, (b) the number of delinquent and incarcerated youth in the demonstration projects, (c) the length of an average foster care placement, (d) the number of completed adoptions for youth residing within the demonstration area, including their age, gender, race, ethnicity and religion, (e) the gross expenditures for foster care, compared to the gross expenditures for child protective, preventive and adoption services, (f) changes in the quality and quantity of time spent by caseworkers with clients, (g) staffing ratios of foster care, preventive and child protective services, (h) the perspective (attitude, viewpoint, outlook) of caseworkers serving and clients served in the demonstration project, and (i) recommendations for expansion of community-based provisions for child welfare services. For purposes of the report, the data described above should be compared to the extent possible with non-demonstration areas.

§ 398-e. Eligibility for protective services, foster care services, and residential services for victims of domestic violence. A noncitizen, including a non-qualified alien, as determined by applicable federal statute and regulation, is eligible for protective services for adults and children, foster care services, and residential services for victims of domestic violence, to the extent such person is otherwise eligible pursuant to this chapter and the regulations of the office of children and family services and the office of temporary and disability assistance.

§ 398-f. Duty to provide luggage to children in foster care. 1. For the purposes of this section, "luggage" means a durable suitcase, duffel bag, backpack, or similar reusable container that is new or is in new-like condition, and is designed to hold an individual's personal belongings and is not a disposable bag, trash bag, or cardboard box.

2. Each local social services district shall supply luggage to children in foster care who do not have appropriate luggage of their own. If any child in foster care reports that their luggage has been lost, stolen, or damaged, the local social services district may provide replacement luggage at its discretion. Any luggage provided by the local social services district may not be reclaimed or retained by the office of children and family services, the local social services districts, voluntary authorized agencies, or the child's foster parent.

3. Eligible expenditures made by a local social services district for luggage for children in foster care under this section shall be subject to state reimbursement under the foster care block grant in accordance with section one hundred fifty-three-k of this chapter.

§ 399. Children discharged from state institutions. The commissioner of social services shall co-operate with the state institutions for delinquent, mentally disabled and physically handicapped children to ascertain the conditions of the home and the character and habits of the parents of a child before his discharge from a state institution, and make recommendations as to the advisability of returning said child to his home. In case the commissioner of social services shall deem it unwise to have any such child returned to his former home, such state institution may, with the consent of the commissioner, place such child into the care of said commissioner of social services.

§ 400. Removal of children. 1. When any child shall have been placed in an institution or in a family home by a social services official, the social services official may remove such child from such institution

or family home and make such disposition of such child as is provided by law, provided however, that in the case of a child who is a patient in a hospital licensed or operated by the office of mental health, such social services official may remove such child only upon the written authorization of the medical director of the facility in which the child is a patient. A medical director may only refuse to authorize the removal of a child if involuntary care and treatment of the child is warranted. In such case the director shall institute necessary civil commitment proceedings in accordance with article nine of the mental hygiene law.

2. Any person aggrieved by such decision of a social services official may appeal to the department pursuant to the provisions of section twenty-two of this chapter.

§ 401. Births to inmates of public homes. No commissioner of public welfare shall provide care in a public home for any pregnant woman during confinement unless such public home has adequate hospital or infirmary facilities, is equipped to give the necessary medical and nursing care and has a certificate from the department authorizing such public home to care for maternity cases. Certificates authorizing a public home to care for maternity cases may be issued by the department for a one-year period, subject to renewal, but may be revoked at any time by the department. If the public home is not so certified, a commissioner of public welfare shall, a reasonable time before the expected confinement of any pregnant woman inmate, provide suitable maintenance and medical care for her in a hospital or some other place equipped to give adequate care.

§ 402. Children forbidden in public homes. No public welfare official shall send a child to be cared for in a public home, and no commissioner of public welfare and no superintendent of a public home shall receive a child in a public home, except that a child under the age of two years may be cared for with his mother in a public home. Such child shall not remain in the public home after he becomes two

years of age. Provided, however, that when so authorized by the department a child may be sent to a general hospital connected with a public home or to a separate institution located in the grounds of a public home used only for special or temporary care of children. Provided, further, that the provisions of this section shall not be deemed to prohibit the placement of a child or minor in a public institution for children, as defined in section three hundred seventy-one of this chapter.

§ 403. The religious faith of children and minors. The religious faith of children and minors between sixteen and eighteen years of age coming under the jurisdiction of public welfare officials shall be preserved and protected in accordance with section three hundred seventy-three.

*** § 404. Juvenile justice services close to home initiative.** 1. A social services district in a city with a population in excess of one million may implement a close to home initiative to provide juvenile justice services to all adjudicated juvenile delinquents determined by a family court in such district as needing placement other than in a secure facility and to enter into contracts with any authorized agency, as defined by section three hundred seventy-one of this chapter, to operate and maintain non-secure and limited secure facilities. Such a social services district shall have sufficient capacity to serve all adjudicated juvenile delinquents needing residential placements within the district within twenty-four months of approval of a plan for each setting level except for those juvenile delinquents who need specialized services that are not available within the district.

2. A social services district shall obtain prior approval from the office of children and family services of its plan for establishing and implementing such an initiative in accordance with guidelines established and in the format, and including the information required, by such office. Such district shall submit separate plans for how the district will implement initiatives for juvenile delinquents placed in

non-secure settings and in limited secure settings. Any such plan shall specify, in detail, as applicable:

(a) how the district will provide a continuum of evidence informed, high-quality community-based and residential programming that will protect community safety and provide appropriate services to youth, including the operation of non-secure and limited secure facilities, in sufficient capacity and in a manner designed to meet the needs of juvenile delinquents cared for under the initiative. Such programming shall be based on an analysis of recent placement trends of youth from within such district, including the number of youth who have been placed in the custody of the office of children and family services for placement in other than a secure facility;

(b) the anticipated start-up and on-going services and administrative costs of the initiative;

(c) the readiness of the district to establish the initiative and the availability of all needed resources, including the location of services and availability of the providers that will provide all necessary services under the initiative including, but not limited to, residential, non-residential, educational, medical, substance abuse, mental health and after care services and community supervision;

(d) the proposed effective date of the plan and documentation of the district's readiness to begin accepting and appropriately serving juvenile delinquents under the plan;

(e) how the district will provide necessary and appropriate staffing to implement the initiative;

(f) how the district will monitor the quality of services provided to youth, including how the district will provide case management services;

(g) how, throughout the initiative, the district will seek and receive on-going community and stakeholder input relating to the implementation and effectiveness of the initiative;

(h) how the district will ensure that all staff working directly with youth served under the initiative have received necessary and appropriate training;

(i) how the district will monitor the use of restraints on youth, including, but not limited to, the use of mechanical restraints;

(j) how the district will develop and implement programs and policies to ensure program safety and that youth receive appropriate services

based on their needs, including, but not limited to, educational, behavioral, mental health and substance abuse services in accordance with individualized treatment plans developed for each youth;

(k) how the district will develop and implement gender specific programming and policies to meet the specialized needs of lesbian, gay, bisexual and transgender youth;

(l) how the district will develop and implement programming that is culturally competent to meet the diverse needs of the youth;

(m) how the district will develop and implement local programs that will seek to reduce the disproportionate placement of minority youth in residential programs in the juvenile justice system;

(n) how the district will develop and implement a plan to reduce the number of youth absent without leave from placement;

(o) how the district will develop and implement policies to serve youth in the least restrictive setting consistent with the needs of youth and public safety, and to avoid modifications of placements to the office of children and family services;

(p) how the district will engage in permanency and discharge planning for juvenile delinquents placed in its custody including, but not limited to, securing adequate housing and health insurance and education and employment, as appropriate;

(q) how the district will develop and implement a comprehensive after care program to provide services and supports for youth who have re-entered the community following a juvenile justice placement with the district;

(r) how the district will develop and implement policies focused on reducing recidivism of youth who leave the program;

(s) how the local probation department will implement a comprehensive predisposition investigation process that includes, at least, the use of appropriate assessments to determine the cognitive, educational/vocational, and substance abuse needs of the youth and the use of a validated risk assessment instrument, approved by the office of children and family services; and how the district will implement an intake process for youth placed in residential care that includes the use of appropriate assessments to determine the medical, dental, mental and behavioral health needs of the youth; and

(t) how the district will provide for the restrictive setting and

programs necessary to serve youth who need placement in a limited secure setting consistent with the necessity for the protection of the health and safety of the juvenile delinquents in the facility and the surrounding community.

3. (a) Prior to submitting any plan pursuant to subdivision two of this section to implement a juvenile justice services close to home initiative for juvenile delinquents placed in non-secure settings, the social services district shall conduct at least one public hearing on the proposed plan. Any such public hearings shall only be held after thirty days notice has been provided in a newspaper of general circulation within the jurisdiction for which the social services district is located. The notice shall specify the times of the public hearing and provide information on how written comments on the plan may be submitted to the district for consideration. Additionally, for a period of at least thirty days prior to a hearing, the district shall post on its website a notice of the hearing, a copy of the proposed plan, and information on how written comments on the plan may be submitted to the district for consideration.

(b) Prior to submitting a plan pursuant to subdivision two of this section to implement a juvenile justice services close to home initiative for juvenile delinquents placed in limited secure settings, the social services district shall:

(i) hold at least one forum in each of the five boroughs within the district for community members and relevant stakeholders including potential provider agencies to discuss, in general, the manner in which the district intends to provide the residential and aftercare services to youth who need placement in limited secure settings in a manner to protect community safety and provide appropriate services to such youth, and to respond to concerns and receive suggested alternatives;

(ii) conduct at least one public hearing in each of the five boroughs within the district on the proposed plan. Such public hearings shall only be held after thirty days notice has been provided in a newspaper of general circulation in the respective borough. The notice shall specify the time of the hearing in the respective borough and provide information on how written comments on the plan may be submitted to the district for consideration. Additionally, for a period of at least

thirty days prior to each such hearing, the district shall post on its website a notice of the hearing, a copy of the proposed plan, and information on how written comments on the plan may be submitted to the district for consideration.

4. The social services district shall submit, with any such plan, an assessment of any written comments received, and any comments presented at the public hearing. At a minimum, such assessment shall contain:

(a) a summary and analysis of the issues raised and significant alternatives suggested;

(b) a statement of the reasons why any significant alternatives were not incorporated into the plan; and

(c) a description of any changes made to the plan as a result of such comments.

At the time of, or prior to, the submission of each such plan to the office, the social services district shall post on its website the plan and the assessment of comments. At the time it submits its plan to the office, the social services district shall provide a copy of the plan and assessment of comments to the temporary president of the senate and the speaker of the assembly.

5. The office of children and family services, in consultation with the office of mental health and the office of alcoholism and substance abuse services, shall be authorized to request amendments to any plan prior to approval. For any plan that only covers juvenile delinquents placed in non-secure settings, the office shall, within thirty days of receiving the plan, either approve or disapprove the plan or request amendments to the plan. If any amendments are requested to the plan, the office shall approve or disapprove the plan within fifteen days of its resubmission with the requested amendments. For any plan that covers juvenile delinquents placed in limited secure settings, the office shall, within sixty days of receiving the plan, either approve or disapprove the plan or request amendments to the plan. If any amendments are requested to the plan, the office shall approve or disapprove the plan within fifteen days of its resubmission with the requested amendments. In no event shall the office approve such a plan for limited secure settings prior to April first, two thousand thirteen.

6. (a) Notwithstanding any other provision of law to the contrary, if the office of children and family services approves a social services district's plan to implement a juvenile justice services close to home initiative for juvenile delinquents placed in non-secure settings, such office shall work with such district to identify those juvenile delinquents in the office's custody residing in non-secure placements and those conditionally released from a facility who were placed by a family court within the jurisdiction of said social services district. The office shall evaluate the placement length and the needs of such juvenile delinquents and, where appropriate, file a petition pursuant to section 355.1 of the family court act to transfer custody of such youth to said social services district on the effective date of the plan, or as soon as appropriate thereafter, but in no event later than ninety days after such effective date; provided, however, if the office determines, on a case-by-case basis, for reasons documented in writing submitted to the social services district, that a transfer within ninety days of the effective date of the plan would be detrimental to the education or the emotional, mental or physical health of a youth, or would seriously interfere with the youth's interstate transfer or imminent discharge, the office shall provide an estimated time by which the office expects to be able to petition for the transfer of such youth or to release such youth from its care, and shall notify the district and the attorney for the respondent of any delay of that expected date and the reasons for such a delay.

(b) Notwithstanding any other provision of law to the contrary, if the office approves a social services district's plan to implement a juvenile justice services close to home initiative for juvenile delinquents placed in limited-secure settings, such office shall work with such district to identify juvenile delinquents in the office's custody residing in limited secure placements who were placed by a family court in the social services district. The office of children and family services shall evaluate the placement length and needs of such juvenile delinquents and, where appropriate, file a petition pursuant to section 355.1 of the family court act to transfer custody of such youth to said social services district on the effective date of the plan or as soon as appropriate thereafter, but in no event later than ninety days

after such effective date; provided, however, if the office determines, on a case-by-case basis, for reasons documented in writing submitted to the social services district, that a transfer within ninety days of the effective date of the plan would be detrimental to the education or the emotional, mental or physical health of a youth, or would seriously interfere with the youth's interstate transfer or imminent discharge, the office shall provide an estimated time by which the office expects to be able to petition for the transfer of such youth or to release such youth from its care, and shall notify the district and the attorney for the respondent of any delay of that expected date and the reasons for such a delay.

7. (a) Notwithstanding the provisions of paragraph (c) of subdivision fifteen of section five hundred one of the executive law, or any other law to the contrary, if the office of children and family services approves a social services district's plan for a juvenile justice services close to home initiative to implement services for juvenile delinquents placed in non-secure or limited secure settings, such office shall be authorized, for up to a year after the effective date of the first of any such approved plan for a district to implement services for each setting level, but in no event later than September first, two thousand fourteen: (1) to close any of its facilities in the corresponding setting levels covered by the approved plan and to make significant associated service reductions and public employee staffing reductions and transfer operations for those setting levels to a private or not-for-profit entity, as determined by the commissioner of the office of children and family services solely to reflect the decrease in the number of juvenile delinquents placed with such office from such social services district; (2) to reduce costs to the state and other social services districts resulting from such decrease; and (3) to adjust services to provide regionally-based care to juvenile delinquents from other parts of the state needing services in those levels of residential services. At least sixty days prior to taking any such action, the commissioner of the office shall provide notice of such action to the speaker of the assembly and the temporary president of the senate and shall post such notice upon its public website. Such notice may be provided at any time on or after the date the office approves a

plan authorizing a social services district to implement programs for juvenile delinquents placed in the applicable setting level. Such commissioner shall be authorized to conduct any and all preparatory actions which may be required to effectuate such closures or significant service or staffing reductions and transfer of operations during such sixty day period. In assessing which of such facilities to close, or at which to implement any significant service reductions, public employee staffing reductions and/or transfer of operations to a private or not-for-profit entity, the commissioner shall consider the following factors: (1) ability to provide a safe, humane and therapeutic environment for placed youth; (2) ability to meet the educational, mental health, substance abuse and behavioral health treatment needs of placed youth; (3) community networks and partnerships that promote the social, mental, economic and behavioral development of placed youth; (4) future capacity requirements for the effective operation of youth facilities; (5) the physical characteristics, conditions and costs of operation of the facility; and (6) the location of the facility in regards to costs and ease of transportation of placed youth and their families.

(b) Any transfers of capacity or any resulting transfer of functions shall be authorized to be made by the commissioner of the office of children and family services and any transfer of personnel upon such transfer of capacity or transfer of functions shall be accomplished in accordance with the provisions of section seventy of the civil service law.

8. (a) Notwithstanding any other provision of law to the contrary, eligible expenditures during the applicable time periods made by a social services district for an approved juvenile justice services close to home initiative shall, if approved by the department of family assistance, be subject to reimbursement with state funds only up to the extent of an annual appropriation made specifically therefor, after first deducting therefrom any federal funds properly received or to be received on account thereof; provided, however, that when such funds have been exhausted, a social services district may receive state reimbursement from other available state appropriations for that state fiscal year for eligible expenditures for services that otherwise would

be reimbursable under such funding streams. Any claims submitted by a social services district for reimbursement for a particular state fiscal year for which the social services district does not receive state reimbursement from the annual appropriation for the approved close to home initiative may not be claimed against that district's appropriation for the initiative for the next or any subsequent state fiscal year.

(b) The department of family assistance is authorized, in its discretion, to make advances to a social services district in anticipation of the state reimbursement provided for in this section.

(c) A social services district shall conduct eligibility determinations for federal and state funding and submit claims for reimbursement in such form and manner and at such times and for such periods as the department of family assistance shall determine.

(d) Notwithstanding any inconsistent provision of law or regulation of the department of family assistance, state reimbursement shall not be made for any expenditure made for the duplication of any grant or allowance for any period.

(e) Claims submitted by a social services district for reimbursement shall be paid after deducting any expenditures defrayed by fees, third party reimbursement, and any non-tax levy funds including any donated funds.

(f) The office of children and family services shall not reimburse any claims for expenditures for residential services that are submitted more than twenty-two months after the calendar quarter in which the expenditures were made.

(g) Notwithstanding any other provision of law, the state shall not be responsible for reimbursing a social services district and a district shall not seek state reimbursement for any portion of any state disallowance or sanction taken against the social services district, or any federal disallowance attributable to final federal agency decisions or to settlements made, when such disallowance or sanction results from the failure of the social services district to comply with federal or state requirements, including, but not limited to, failure to document eligibility for the federal or state funds in the case record. To the extent that the social services district has sufficient claims other than those that are subject to disallowance or sanction to draw down the full annual appropriation, such disallowance or sanction shall not

result in a reduction in payment of state funds to the district unless the district requests that the department use a portion of the appropriation toward meeting the district's responsibility to repay the federal government for the disallowance or sanction and any related interest payments.

(h) Rates for residential services. (i) The office shall establish the rates, in accordance with section three hundred ninety-eight-a of this chapter, for any non-secure facilities established under an approved juvenile justice services close to home initiative. For any such non-secure facility that will be used primarily by the social services district with an approved close to home initiative, final authority for establishment of such rates and any adjustments thereto shall reside with the office, but such rates and any adjustments thereto shall be established only upon the request of, and in consultation with, such social services district.

(ii) A social services district with an approved juvenile justice services close to home initiative for juvenile delinquents placed in limited secure settings shall have the authority to establish and adjust, on an annual or regular basis, maintenance rates for limited secure facilities providing residential services under such initiative. Such rates shall not be subject to the provisions of section three hundred ninety-eight-a of this chapter but shall be subject to maximum cost limits established by the office of children and family services.

9. Upon approval of a social services district's plan, the office of children and family services shall notify the supervising family court judge responsible for the family courts serving such district of the effective date and placement settings covered by the plan.

(a) Beginning on the effective date of a district's approved plan that only covers juvenile delinquents placed in non-secure settings, a family court judge serving in a county where such social services district is located shall only be authorized to place an adjudicated juvenile delinquent in the custody of the commissioner of the office of children and family services for placement in a secure or limited secure facility pursuant to section 353.3 or 353.5 of the family court act.

(b) Beginning on the effective date of a district's approved plan to implement programs for juvenile delinquents placed in limited secure

settings, a family court judge serving in a county where such social services district is located shall only be authorized to place an adjudicated juvenile delinquent in the custody of the commissioner of the office of children and family services for placement in a secure facility pursuant to section 353.3 or 353.5 of the family court act.

10. If the social services district receives the necessary approval to implement a close to home initiative, the district shall implement the initiative in accordance with all applicable federal and state laws and regulations. If the social services district receives the necessary approval of a plan for juvenile delinquents placed in limited secure settings, the office shall promulgate regulations governing the operation of such limited secure facilities. If such regulations are not adopted prior to the date that an authorized agency applies for a license to operate such a facility, the facility shall be subject to the existing regulations of the office that would apply to the operation of a foster care facility of the same size; provided, however, that the office shall be authorized to grant an exception to the authorized agency, until such limited secure regulations are adopted, to any such existing regulation that the office determines would impede the ability of the authorized agency to provide the restrictive setting and programs necessary to serve youth who need placement in a limited secure setting in accordance with the approved plan. Any limited secure facility that is granted such a waiver shall comply with any alternate requirements the office may consider necessary for the protection of the health or safety of the juvenile delinquents in the facility or the surrounding community. The office shall take all reasonable steps available to finalize the adoption of regulations governing the operation of such limited secure facilities no later than six months after it issues the first license for a program to provide services to juvenile delinquents placed in limited secure settings but in no event shall such regulations be adopted on an emergency basis.

(a) The initiative shall be subject to the office of children and family services' ongoing oversight and monitoring including, but not limited to: case record reviews; staff, family, and client interviews; on-site inspections; review of data regarding provider performance, youth and staff safety, and quality of care, which must be provided to

the office in order to carry out its responsibilities, in the form and manner and at such times as required by the office; and continued licensing and monitoring of the authorized agencies providing services under the plan pursuant to this chapter.

(b) The social services district shall provide each juvenile delinquent with an appropriate level of services designed to meet his or her individual needs and to enhance public safety and shall provide the office of children and family services with specific information as required by the office, in the format and at such times as required by such office, on the youth participating in the initiative and the programs serving such youth. Such information shall be provided to the office of children and family services on a monthly basis for the first twelve months immediately following the implementation of the programs for each level of care and shall be provided to such office on a quarterly basis thereafter.

11. The social services district shall submit an annual report to the office of children and family services, the temporary president of the senate and the speaker of the assembly, in the format required by such office, detailing overall initiative performance. Such report shall include, but not be limited to:

(a) number of juvenile delinquents placed with the local social services district;

(b) number of juvenile delinquents placed in a non-secure facility with the social services district;

(c) number of juvenile delinquents placed in a limited secure facility with the social services district, as applicable;

(d) demographic information about juvenile delinquents in care;

(e) number of specialized beds in each category of specialized program;

(f) number and nature of incident reports;

(g) number of juvenile delinquents absent without leave per facility;

(h) average length of stay;

(i) number of conditionally released juvenile delinquents;

(j) number of discharged juvenile delinquents who are subsequently placed with the district;

(k) number and nature of corrective action plans and resolutions;

(l) number of juvenile delinquents transferred between facilities, including the number of juvenile delinquents transferred between non-secure and limited-secure facilities, as applicable; and

(m) number of petitions filed to transfer juvenile delinquents between the custody of the office and the social services district.

12. If the office of children and family services determines that the social services district is failing to adequately provide for the juvenile delinquents placed under an approved plan, such office may require the social services district to submit a corrective action plan, for such office's approval, demonstrating how it will rectify the inadequacies in the time specified by the office, but no later than thirty days from such request. If the office determines that the social services district is failing to make sufficient progress towards implementing the corrective action plan in the time and manner approved by the office but no later than sixty days from the date of submission of the corrective action plan, the office shall provide the district written notice of such determination and the basis therefor, and mandate that the district take all necessary actions to implement the plan. If a district has failed, within a reasonable time thereafter as specified by the office based on the nature of the failure, which shall in no event exceed sixty days, to make progress implementing any regulation, or any other portion of such plan that is intended to prevent imminent danger to the health, safety or welfare of the youth being served under the plan, the office may withhold or set aside a portion of the funding due under subdivision eight of this section until the district demonstrates that sufficient progress is being made; or terminate the district's authority to operate all or a portion of the juvenile justice services close to home initiative, take all necessary steps to assume custody for, and provide services to, the applicable juvenile delinquents being served under the initiative, and discontinue funds provided to the district for such services. The office shall not withhold, set aside or discontinue state aid to a district until written notice is given to the commissioner of the district, and in the event funding is withheld, set aside or discontinued, the district may appeal to the office, which shall hold a fair hearing thereon in accordance with the provisions of section twenty-two of this chapter relating to fair hearings. The

district may institute a proceeding for a review of the determination of the office following the fair hearing pursuant to article seventy-eight of the civil practice law and rules. Any funds withheld, set aside or discontinued pursuant to this provision shall be applied to address the problem which was the basis for such sanction. If the office terminates a district's authority to operate any portion of a juvenile justice services close to home initiative in accordance with this subdivision, the office shall notify the supervising family court judge responsible for the family courts serving such district of such termination and the effective date of such termination.

13. Once a plan becomes operative pursuant to this section, the social services district shall carry out the following functions, powers and duties with respect to placements of juvenile delinquents in accordance with the provisions of such plan and all applicable federal and state laws and regulations:

(a) to enter into contracts with authorized agencies, as defined in section three hundred seventy-one of this chapter, to operate and maintain facilities authorized under such plan; such contracts may include such program requirements as deemed necessary by the district;

(b) to determine the particular facility or program in which a juvenile delinquent placed with the district shall be cared for, based upon any applicable court order, pursuant to subdivision two of section 353.3 of the family court act, and an evaluation of such juvenile delinquent;

(c) to transfer a juvenile delinquent from one facility to any other facility, when the interests of such juvenile delinquent require such action, upon prior notice to the respondent, the attorney for the respondent and the respondent's parent or legal guardian, unless an immediate change of placement is necessary, in which case such notice shall be transmitted on the next business day; provided that, if the district has an approved plan to implement services for juvenile delinquents placed in limited secure settings, a juvenile delinquent transferred to a non-secure facility from a limited secure facility may be returned to a limited secure facility upon a determination by the district that, for any reason, care and treatment at the non-secure facility is no longer suitable;

(d) to cause a juvenile delinquent under the jurisdiction of the district who has run away from a facility run by the district or an authorized agency; or is conditionally released and has violated a condition of release therefrom, or if there is a change in circumstances and the district determines that it would be consistent with the needs and best interests of said juvenile delinquent and the need to protect the community; to be apprehended and returned to the district, detention facility, authorized agency, or program pursuant to regulations of the office of children and family services; provided further that:

(i) a social services official shall give immediate written notice to both the office and the family court when any juvenile delinquent placed with the social services district is absent from such placement without consent;

(ii) an authorized agency shall give immediate written notice to the office, the district and the family court when any juvenile delinquent placed by the district for care in such authorized agency is absent from such placement without consent;

(iii) a magistrate may cause a runaway or conditionally released juvenile delinquent to be held in custody until returned to the district;

(e) to issue a warrant for the apprehension and return of a juvenile delinquent under the jurisdiction of the district who has run away from a facility run by the district or an authorized agency; or is conditionally released and has violated a condition of release therefrom, or if there is a change in circumstances and the district determines that it would be consistent with the needs and best interest of said juvenile delinquent and the need to protect the community; pursuant to regulations of the office of children and family services; provided that:

(i) a social services official, pursuant to the regulations of the office of children and family services, shall issue a warrant directed generally to any peace officer, acting pursuant to such officer's special duties, or police officer in the state for the apprehension and return of any runaway or conditionally released juvenile delinquent under the jurisdiction of the district and such warrant shall be executed by any peace officer, acting pursuant to such officer's special duties, or police officer to whom it may be delivered; the social

services district also shall provide relevant law enforcement agencies within forty-eight hours with any photographs of any runaway or conditionally released juvenile delinquent for whom a warrant is issued, together with any pertinent information relative to such juvenile delinquent; such photographs shall remain the property of the social services district and shall be kept confidential for use solely in the apprehension of such juvenile delinquent and shall be returned promptly to the district upon apprehension of such juvenile delinquent, or upon the demand of the district;

(f) to authorize an employee designated by the social services district, without a warrant, to apprehend a runaway or conditionally released juvenile delinquent under the jurisdiction of the district who has run away from a facility run by the district or an authorized agency; or is conditionally released and has violated a condition of release therefrom, or if there is a change in circumstances and the district determines that it would be consistent with the needs and best interests of said juvenile delinquent and the need to protect the community; in any county in this state whose return has been ordered by the district pursuant to the regulations of the office, and return said juvenile delinquent to any appropriate social services district, detention facility, authorized agency or program;

(g) pursuant to the regulations of the office of children and family services, to develop and operate programs for youth placed or referred to the district or in conjunction with an order provided in accordance with section 353.6 of the family court act;

(h) upon the placement of any juvenile delinquent eighteen years of age or older, or upon the eighteenth birthday of any youth placed in the custody of the social services district for an adjudication of juvenile delinquency for having committed an act which if committed by an adult would constitute a felony, and still in the custody of the social services district, to notify the division of criminal justice services of such placement or birthday. Provided, however, in the case of a youth eleven or twelve years of age at the time the act or acts were committed, the division of criminal justice services shall not be provided with the youth's name, unless the acts committed by such youth would constitute a class A or B felony. Upon the subsequent discharge it shall be the duty of the social services district to notify the division

of criminal justice services of that fact and the date of discharge. For the purposes of this paragraph, a youth's age shall be determined to be the age stated in the placement order;

(i) to provide juvenile delinquents in residential placements with reasonable and appropriate visitation by family members and consultation with their legal representative in accordance with the regulations of the office of children and family services; and

(j) to provide residential care in programs subject to the regulations of the office of children and family services, for infants born to or being nursed by female juvenile delinquents placed with the district; residential care for such an infant may be provided for such period of time as is deemed desirable for the welfare of the mother or infant.

14. The following persons shall be authorized to visit, at their pleasure, all programs operated by a social services district pursuant to, or in accordance with this section: the governor; lieutenant governor; comptroller; attorney general; members of the legislature; judges of the court of appeals; judges from supreme court, family court and county courts and district attorneys, county attorneys and attorneys employed in the office of the corporation counsel having jurisdiction within the applicable social services district or county where a program is located; and any person or agency otherwise authorized by statute.

15. A juvenile delinquent in the care of the social services district who attends public school while in residence at a facility shall be deemed a resident of the school district where the youth's parent or guardian resides at the commencement of each school year for the purpose of determining which school district shall be responsible for the youth's tuition.

16. The social services district shall be permitted to appear as amicus in any action involving an appeal from a decision of any court of this state that relates to programs, conditions or services provided by such district or any authorized agency with which the district has placed a juvenile delinquent pursuant to this section. Written notice shall be given by the corporation counsel of the city of New York, or county attorney, as applicable, to the parties to the appeal when such

amicus status is requested.

17. Notwithstanding any provision of law to the contrary, the social services district may delay acceptance of a juvenile delinquent in detention who is placed in the district's custody in accordance with the regulations of the office of children and family services; provided, however, that where the juvenile delinquent is in detention, such delay may not exceed fifteen days from the date the placement was made except as provided for in subdivision three of section three hundred ninety-eight of this article.

18. No order that places a juvenile delinquent in the custody of the social services district that recites the facts upon which it is based shall be deemed or held to be invalid by reason of any imperfection or defect in form.

* NB Repealed March 31, 2028

TITLE 3

CHILD WELFARE SERVICES

Section 406. Department of social welfare designated as state agency.

407. Powers of department of social welfare.

408. Custodian of funds.

§ 406. Department of social welfare designated as state agency. The department is hereby designated as the agency of the state to administer and expend any and all grants of moneys allocated or made available to the state under the provisions of the federal social security act for child welfare services as defined in such act, subject to the provisions of such act and rules and regulations established thereunder and to the laws of the state and rules and regulations established by the state comptroller.

§ 407. Powers of department of social welfare. The department is hereby authorized and required:

1. to prepare a plan or plans for such child welfare services and upon their approval by such federal authority to execute the same. Such plans shall make provision for coordination between the services provided under such plans and the services provided as family assistance under title ten of article five with the view of providing welfare and related services which will best promote the welfare of children and their families.

2. to allocate and disburse to districts, counties or other local subdivisions of the state such amounts from moneys received by the state under the provisions of this title as are available for payment of part of the cost of district, county or other local child welfare services in accordance with such approved plans. Such district, county and other local subdivisions of the state are hereby authorized to receive and expend such allotments but only for the purposes of such plans and subject to the supervision and general direction of the department. Such district, county and other local subdivisions shall, when required by the department to comply with the provisions of such approved plan, perform the functions required.

3. to develop within the department services for the encouragement and assistance of adequate methods of community child welfare organization in accordance with such approved plans.

4. to establish and to alter and amend such regulations as may be necessary for the administration of such plans and the provisions of this title.

5. to prepare for inclusion in the annual report required by subdivision (d) of section seventeen of this chapter to be filed with the governor and the legislature prior to the fifteenth day of December of each year, a written evaluation report of the delivery of child welfare services in the state. Such evaluation report shall include, but need not be limited to, supervision of foster care and the agencies providing such care, information on the types of problems creating the need for foster care placements, preventive and protective services, the

transfer of children in care and the reasons therefor, identification of target groups not receiving adequate services, and projected plans for providing services to such groups. Such report shall include progress made and problems encountered in the implementation of "the child welfare reform act of 1979", and amendments thereto. Such report shall also include aggregate expenditures; persons receiving services; cost comparisons among social services districts, among types of services and services programs, and among fiscal periods; unit costs; and cost-effectiveness of the provision of preventive services pursuant to title four of this chapter. In developing such evaluation, the department shall consult and coordinate with the board of social welfare, the division for youth, and the departments of mental hygiene, health and education.

§ 408. Custodian of funds. The department of taxation and finance is hereby authorized to accept and receive on behalf of the state any and all grants or allotments of money made available to the state by or pursuant to the federal social security act for such child welfare services. All moneys so accepted and received shall be deposited by the department of taxation and finance to the credit of a special fund for use exclusively for the purposes for which such grants or allotments were made. The department shall certify to the comptroller all expenditures to be made from such special fund for payment of the part of the cost of district, county or other local child welfare services and for developing state services for the encouragement and assistance of adequate methods of community child welfare organization. Such expenditures may be made for personal service and for administrative and other costs of operation.

TITLE 4

PREVENTIVE SERVICES FOR CHILDREN AND THEIR FAMILIES

Section 409. Preventive services; definition.

409-a. Preventive services; provision by social services officials.

§ 409. Preventive services; definition. As used in this title, "preventive services" shall mean supportive and rehabilitative services provided, in accordance with the provisions of this title and regulations of the department, to children and their families for the purpose of: averting an impairment or disruption of a family which will or could result in the placement of a child in foster care; enabling a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care.

§ 409-a. Preventive services; provision by social services officials.

1. (a) A social services official shall provide preventive services to a child and his or her family, in accordance with the family's service plan as required by section four hundred nine-e of this chapter and the social services district's child welfare services plan submitted and approved pursuant to section four hundred nine-d of this chapter, upon a finding by such official that (i) the child will be placed, returned to or continued in foster care unless such services are provided and that it is reasonable to believe that by providing such services the child will be able to remain with or be returned to his or her family, and for a former foster care youth under the age of twenty-one who was previously placed in the care and custody or custody and guardianship of the local commissioner of social services or other officer, board or department authorized to receive children as public charges where it is reasonable to believe that by providing such services the former foster care youth will avoid a return to foster care or * (ii) the child is the subject of a petition under article seven of the family court act or by the probation service, to be at risk of being the subject of such a petition, and the social services official determines that the child is at risk of placement into foster care or

* NB Effective until June 30, 2027

* (ii) the child is the subject of a petition under article seven of the family court act, or has been determined by the assessment service established pursuant to section two hundred forty-three-a of the

executive law, or by the probation service where no such assessment service has been designated, to be at risk of being the subject of such a petition, and the social services official determines according to standards promulgated pursuant to section three hundred ninety-eight-b of this chapter that the child is at risk of placement into foster care. Such finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this chapter. The commissioner shall promulgate regulations to assist social services officials in making determinations of eligibility for mandated preventive services pursuant to clause (ii) of this paragraph.

* NB Effective June 30, 2027

(iii) the child is under the age of twelve, the child does not fall under the definition of a juvenile delinquent pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the family court act and but for their age, their behavior would bring them within the jurisdiction of the family court pursuant to article three of the family court act, and the social services official determines that the child is at risk of placement into foster care. Such finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this article. The commissioner shall promulgate regulations to assist social services officials in making determinations of eligibility for mandated preventive services pursuant to this subparagraph.

(b) When a child and his family have received preventive services for a period of six months pursuant to this subdivision, the social services official shall continue to provide such services only upon making a new finding that the child will be placed or continued in foster care unless such services are provided and that it is reasonable to believe that by providing such services, the child will be able to remain with or be returned to his family. Such new finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this chapter.

2. A social services official is authorized to provide preventive services to a child and his family to accomplish the purposes set forth in section four hundred nine of this chapter, when such services are not required to be provided pursuant to subdivision one of this section.

3. * (a) A social services official is authorized to provide community preventive services to communities likely to benefit from such services to accomplish the purposes set forth in section four hundred nine of this chapter. Social services officials may apply to the office of children and family services for waiver of eligibility and administrative requirements for preventive services to be provided pursuant to this subdivision. Such application shall include a plan setting forth the services to be provided, the persons or community that will receive the services and the estimated cost of such services. Upon approval of the application by the office of children and family services, eligibility requirements established in statute or regulation may be waived for those persons and communities identified in the plan as recipients of the services set forth in the plan. Where services are administered pursuant to a plan approved by the office of children and family services, the office of children and family services may waive the requirements of section four hundred nine-f or four hundred forty-two of this article.

* NB Effective until June 30, 2027

* (a) A social services official is authorized to provide community preventive services to communities likely to benefit from such services to accomplish the purposes set forth in section four hundred nine of this chapter. Social services officials may apply to the department for waiver of eligibility and administrative requirements for preventive services to be provided pursuant to this subdivision. Such application shall include a plan setting forth the services to be provided, the persons or community that will receive the services and the estimated cost of such services. Upon approval of the application by the department, eligibility requirements established in statute or regulation may be waived for those persons and communities identified in the plan as recipients of the services set forth in the plan. Where services are administered pursuant to a plan approved by the department, the department may waive the requirements of sections one hundred fifty-three-d and three hundred ninety-eight-b of this chapter pertaining to denial or reimbursement. Where such a waiver is approved, the department approval must specify standards whereby services provided will be subject to denial of reimbursement. Where services are

administered pursuant to a plan approved by the department, the department may waive the requirements of section four hundred nine-f or four hundred forty-two of this article.

* NB Effective June 30, 2027

(b) The department must inform social services districts of procedures governing application for waivers of eligibility and administrative requirements and approval of waivers of eligibility and administrative requirements. Where such waivers are granted, the department shall have the authority to establish alternative standards to be followed by social services officials who are granted waivers by the department. Upon approval of an application for such waivers, the department approval must specify the requirements being waived and any alternative standards established.

(c) Community preventive services may be provided pursuant to this subdivision through demonstration projects to the extent the department makes funds available for such projects.

(d) The department shall develop an evaluation plan no later than April first, nineteen hundred eighty-eight, for community service demonstration projects and, subject to the approval of the director of the budget, may use up to five percent of the amount annually appropriated for project grants to conduct such evaluation which shall include but need not be limited to: an assessment of the effectiveness of various service delivery models in creating or enhancing linkages among school, housing, health, and income support services available in the community; the effectiveness of various preventive services in averting family disruption; the cost effectiveness of providing community focused preventive services; the impact of this service provision on requirements for more intensive mandated preventive services; and, the feasibility of replicating successful service models in other communities throughout the state.

4. Preventive services may be provided directly by the social services official or through purchase of service, in accordance with regulations of the department.

5. (a) Regulations of the department, promulgated pursuant to and not inconsistent with this section, shall contain program standards

including, but not limited to: specification of services to be classified as preventive services; appropriate circumstances and conditions for the provision of particular services; appropriate providers and recipients of such services; and time limits, as may be appropriate, for the provision of particular services. The department shall, subject to the approval of the director of the budget, establish reimbursement or charge limitations for particular services or groups of services to be provided. The department shall also promulgate regulations to prevent social services districts from overutilizing particular forms or types of preventive services and to encourage districts to provide balanced preventive services programs based on the identified needs of children and families residing in such districts.

(b) The program standards promulgated pursuant to this subdivision shall be developed with the participation of the child welfare standards advisory council established pursuant to section four hundred nine-h of this chapter and in consultation with public and voluntary authorized agencies, citizens' groups and concerned individuals and organizations, including the state council on children and families.

(c) Notwithstanding any other provision of this section, where a social services official determines that a lack of adequate housing is the primary factor preventing the discharge of a child or children from foster care including, but not limited to, children with the goal of discharge to independent living, preventive services shall include, in addition to any other payments or benefits received by the family, special cash grants in the form of rent subsidies, including rent arrears, or any other assistance, sufficient to obtain adequate housing. Such rent subsidies or assistance shall not exceed the sum of seven hundred twenty-five dollars per month, shall not be provided for a period of more than three years, and shall be considered a special grant. Nothing in this paragraph shall be construed to limit the ability of those using such rent subsidy to live with roommates. The provisions of this paragraph shall not be construed to limit such official's authority to provide other preventive services.

(e) (i) A social services official is authorized to establish and operate, or contract for the establishment and operation of, intensive, homebased, family preservation programs.

(ii) Notwithstanding any other provision of law, reimbursement for

intensive, homebased family preservation services shall be limited to those programs that reduce or avoid the need for foster care of children who are in imminent danger of placement. Such programs shall employ caseworkers trained in family preservation techniques and who provide at least half of their direct services in the client's residence or temporary home, work with no more than four families at any given time, provide direct therapeutic services for up to thirty days which may be extended up to an additional thirty days per family and are available twenty-four hours a day. No program described herein shall receive reimbursement unless such program agrees to collect and provide to the department information necessary to evaluate and assess the degree to which such program results in lower costs to the state and to social services districts than those of foster care placement. Such information shall be compiled in a manner that permits comparisons between families served by such programs and those families who meet eligibility criteria but who were not able to be served within available resources.

(f) Notwithstanding any other provision of law, where a social services official authorizes the provision of respite care, such care shall mean the temporary care and supervision of a child to relieve parents or other persons legally responsible for the care of such child where immediate relief is needed to maintain or restore family functioning.

6. In accordance with regulations of the department, where the child's family is able to pay all or part of the cost of such services, payments of such fees as may be reasonable or other third party reimbursement as may be available in the light of such ability shall be required. Expenditures subject to reimbursement pursuant to section four hundred nine-b of this title shall be reduced by the sum of all fees received or to be received pursuant to this subdivision.

* 7. Notwithstanding any other provision of this section, if a social services official determines that a lack of adequate housing is a factor that may cause the entry of a child or children into foster care and the family has at least one service need other than lack of adequate housing, preventive services may include, in addition to any other payments or benefits received by the family, special cash grants in the form of rent subsidies, including rent arrears, or any other assistance,

sufficient to obtain adequate housing. Such rent subsidies or assistance shall not exceed the sum of seven hundred twenty-five dollars per month, shall not be provided for a period of more than three years, and shall be considered a special grant. Nothing in this subdivision shall be construed to limit the ability of those using such rent subsidy to live with roommates. The provisions of this paragraph shall not be construed to limit such official's authority to provide other preventive services.

* NB There are two sub 7's

* 7. Notwithstanding any other provision of law, preventive services information governed by this section may be released by the department, social services district or other provider of preventive services to a person, agency or organization for purposes of a bona fide research project. Identifying information shall not be made available, however, unless it is absolutely essential to the research purpose and the department gives prior approval. Information released pursuant to this subdivision shall not be re-disclosed except as otherwise permitted by law and upon the approval of the department.

* NB There are 2 sub 7's

8. In contracting for the provision of preventive services, social services districts shall, to the extent feasible, place such services in areas with a high rate of child abuse and neglect and foster care placements. Social services districts shall, to the extent feasible, consider as a priority community-based organizations with a record of providing quality services to children and families in such communities.

9. (a) Notwithstanding any provision of law to the contrary, records relating to children pursuant to this section shall be made available to officers and employees of the state comptroller, or of the city comptroller of the city of New York, or of the county officer designated by law or charter to perform the auditing function in any county not wholly contained within a city, for purposes of a duly authorized performance audit, provided, however that such comptroller or officer shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit, that such persons shall not

use such information in any way except for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information obtained in the conduct of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written approval.

(b) Any failure to maintain the confidentiality of client-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the department. The department shall establish the grounds for denial of access to records contained under this section and shall recommend as necessary a plan of remediation to the audit agency, except as provided in this section, nothing in this subdivision shall be construed as limiting the powers of such comptroller or officer to records which he is otherwise authorized to audit or obtain under any other applicable provision of law, any person given access to information pursuant to this subdivision who released data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor.

10. All sums received by the state under section 201 of Federal Public Law 105-89 shall be paid to the districts in proportion to the amount earned by the district for federal adoption incentives and shall only be used to provide preventive services to a child and his or her family as defined in paragraph (a) of subdivision five of this section, in addition to those required by the maintenance of effort requirement contained in subdivision six of section one hundred fifty-three-i of this chapter, except that up to thirty percent of such sums may be used to provide post-adoption services to children or families. Preventive services shall include substance abuse treatment services provided to

pregnant women or a caretaker person in an outpatient, residential or in-patient setting. Amounts expended by the state in accordance with this section shall be disregarded in determining the state's expenditures for purposes of federal matching payments under sections four hundred twenty-three, four hundred thirty-four and four hundred seventy-four of this chapter.

* 11. (a) The office of children and family services shall collect the following data regarding preventive services, as defined in section four hundred nine of this title, and compile an annual report on such data by local social services district:

(i) the total number of children and families admitted to or receiving a new service authorization for preventive services during the preceding calendar year;

(ii) the total annual number of unduplicated children and families receiving one or more days of preventive services including how many new preventive cases were opened during the preceding calendar year and to the extent such information is known and available after making all diligent efforts, the referral source for each new case;

(iii) the total number of children and families whose preventive services authorization was closed during the preceding calendar year;

(iv) a descriptive list of the services and their utilization rate, if practicable, in each local social services district which utilize preventive service funding as allowable under section one hundred fifty-three-k of this chapter;

(v) a descriptive list and their utilization rate, if practicable, of other preventive services provided by a local social services district that does not utilize preventive service funding pursuant to section one hundred fifty-three-k of this chapter. For purposes of this paragraph, other preventive services shall include but not be limited to primary preventive services which may be funded through community optional preventive services funding or home visiting funds;

(vi) the total number of children who entered foster care during the preceding calendar year who had received preventive services at any point during the twelve-months prior to their entry into foster care; and

(vii) any other information the commissioner may deem necessary to include in said report.

(b) The office of children and family services shall submit such report to the governor, the speaker of the assembly, the temporary president of the senate, the chairpersons of the assembly and senate children and families committees, the chairperson of the assembly ways and means committee and the chairperson of the senate finance committee starting no later than September first, two thousand twenty-one. Such report shall include data and information required by paragraph (a) of this subdivision for the preceding calendar year, to the extent such information is available. When practicable, such information shall be disaggregated by age, sex, race and ethnicity.

(c) The initial report shall include the aforementioned data from the preceding two calendar years.

* NB Repealed September 1, 2027

TITLE 4-A

CHILD WELFARE SERVICES PLANNING AND ADMINISTRATION

Section 409-d. District-wide child welfare services plan.

409-e. Family service plan.

409-f. Uniform case recording.

409-g. Training of child welfare personnel.

409-h. Assessment of appropriateness of placement in a qualified residential treatment program.

§ 409-d. District-wide child welfare services plan. 1. Each social services district shall prepare and submit to the department, in such form and manner and times as the department shall by regulation require, a district-wide child welfare services plan which shall be a component of the district's multi-year consolidated services plan setting forth: the child welfare services needs of children and families for whom the social services district is or may be responsible; historic program and fiscal trends of the district in the level of care, maintenance and services provided to children and their families, including but not limited to expenditure trends, children and families served and costs of services provided; an assessment of projected program and fiscal requirements of the district in meeting identified needs in the next

state fiscal year; and a description of the resources known to be available or likely to become available to meet those needs. Commencing the year following preparation of a multi-year consolidated services plan, each social services district shall prepare an annual implementation report related to its child welfare services plan. As used in this section "services" shall mean and include preventive services, foster care maintenance and services, and adoption services. Such regulations shall include but need not be limited to criteria and methodology for determining child welfare services needs and the adequacy of the resources known to be available or likely to become available to meet those needs.

2. The child welfare services plan and annual implementation reports shall be developed by the district in consultation with other government agencies concerned with the welfare of children residing in the district, authorized agencies, and other concerned individuals and organizations. The plan as submitted to the department for approval and as approved by the department shall be made available to such agencies, individuals and organizations upon request.

3. (a) Each social services district shall submit its child welfare services plan and annual implementation reports pertaining to this plan to the department as a component of the multi-year consolidated services plan and subsequent annual implementation reports and the department shall review and approve or disapprove the proposed plan in accordance with the procedures set forth in section thirty-four-a of this chapter.

(b) Such plan shall not be approved unless:

(i) it complies with the provisions of this section;

(ii) it demonstrates that child welfare services included in the plan are appropriate to meet the assessed needs of the children and families for whom the social services district is or may be responsible;

(iii) it is consistent with applicable provisions of this chapter and regulations of the department promulgated thereunder; and

(iv) it is in the format and includes such standardized information and data as may be required by the department to effectively evaluate such plans.

§ 409-e. Family service plan. 1. With respect to each child who is identified by a local social services district as being considered for placement in foster care as defined in section one thousand eighty-seven of the family court act by a social services district, such district, within thirty days from the date of such identification, shall perform an assessment of the child and his or her family circumstances. Where a child has been removed from his or her home, within thirty days of such removal the local social services district shall perform an assessment of the child and his or her family circumstances, or update any assessment performed when the child was considered for placement. Any assessment shall be in accordance with such uniform procedures and criteria as the office of children and family services shall by regulation prescribe. Such assessment shall include the following:

(a) a statement of the specific immediate problems which appear to require some intervention by the social services officials;

(b) a description of the long term family relationships, an assessment of trends in the stability of the family unit, and of the likelihood that specific preventive services will increase family stabilization sufficiently to prevent placement or to reduce the duration of a necessary placement;

(c) an estimate of the time period necessary to ameliorate the conditions leading to a need for placement, and a description of any immediate actions that have been taken or must be taken during or immediately after the conclusion of the assessment; and

(d) where placement in foster care is determined necessary, the reasonable efforts made to prevent or eliminate the need for placement or the reason such efforts were not made, the kind and level of placement and the reasons therefor, whether the child will be placed with the child's siblings and half-siblings and, if not, the reasons therefor and the arrangements made for contact between the siblings and half-siblings, identification of all available placement alternatives and the specific reasons why they were rejected, an estimate of the anticipated duration of placement, and plan for termination of services under appropriate circumstances, with specific explanation of the reasons for such termination plan.

2. Upon completion of any assessment provided for in subdivision one of this section, and not later than thirty days after placement of a child in foster care pursuant to article three or seven of the family court act or not later than thirty days after a child is removed from his or her home, the local social services district shall establish or update and maintain a family service plan based on the assessment required by subdivision one of this section. The plan shall be prepared in consultation with the child's parent or guardian, unless such person is unavailable or unwilling to participate, or such participation would be harmful to the child, and with the child if the child is ten years of age or older, and, where appropriate, with the child's siblings. Such consultation shall be done in person, unless such a meeting is impracticable or would be harmful to the child. If it is impracticable to hold such consultation in person, such consultation may be done through the use of technology, including but not limited to, videoconferencing and teleconference technology. If the parent is incarcerated or residing in a residential drug treatment facility, the plan shall reflect the special circumstances and needs of the child and the family. The plan shall include at least the following:

(a) time frames for periodic reassessment of the care and maintenance needs of each child and the manner in which such reassessments are to be accomplished;

(b) short term, intermediate and long range goals for the child and family and actions planned to meet the need of the child and family and each goal;

(c) identification of necessary and appropriate services and assistance to the child and members of the child's family. The services so identified shall, before being included in the family service plan, be assessed to determine the projected effectiveness of such plan including but not limited to the following considerations:

(i) the family's concurrence with the plan;

(ii) the ability and motivation of the family to access services, including geographic accessibility;

(iii) the relatedness of the services to the family's needs and its socio-economic and cultural circumstances; and

(iv) other factors which may impact upon the effectiveness of such plan. The service plan shall also describe the availability of such

services and the manner in which they are to be provided;

(d) any alternative plans for services where specific services are not available, and any viable options for services considered during the planning process;

(e) where placement in foster care is determined necessary, specification of the reasons for such determination, the kind and level of placement, any available placement alternatives, an estimate of the anticipated duration of placement, and plan for termination of services under appropriate circumstances.

3. The plan shall be reviewed and revised, in accordance with the procedures and standards in subdivision two of this section, at least within the first ninety days following the date the child was first considered for placement in foster care, and, if the child has been placed in foster care pursuant to article three or seven of the family court act or removed from his or her home, within the first ninety days following the date of placement or removal. The plan shall be further reviewed and revised not later than one hundred twenty days from this initial review and at least every six months thereafter; provided, however, that if a sibling or half-sibling of the child has previously been considered for placement or removed from the home, the plan shall be further reviewed and revised on the schedule established for the family based on the earliest of those events. Such revisions shall indicate the types, dates and sources of services that have actually been provided and an evaluation of the efficacy of such services, and any necessary or desirable revisions in goals or planned services. The review and revision of the plan shall be prepared in consultation with the child's parent or guardian, unless such person is unavailable or unwilling to participate, or such participation would be harmful to the child, and with the child if the child is ten years of age or older, and, where appropriate, with the child's siblings. Such consultation shall be done in person, unless such a meeting is impracticable or would be harmful to the child. If it is impracticable to hold such consultation in person, such consultation may be done through the use of technology, including but not limited to, videoconferencing and teleconference technology.

4. In accordance with regulations of the department, relevant portions of the assessment of the child and family circumstances, including but not limited to the material described in paragraph (d) of subdivision one of this section, and a complete copy of the family service plan, established pursuant to subdivisions one and two, respectively, of this section shall be given to the child's parent or guardian, counsel for such parent or guardian, and the child's attorney, if any, within ten days of preparation of any such plan.

5. The family service plan developed in regard to a child in foster care pursuant to this section shall include the permanency plan provided to the court in accordance with the family court act and this chapter.

6. Nothing in this section shall require a social services district to complete an assessment or service plan for a child who is in the custody of the office of children and family services, unless the child is also in the care and custody or custody and guardianship of the commissioner of the social services district.

§ 409-f. Uniform case recording. 1. With respect to each child described in subdivision one of section four hundred nine-e of this title, the social services district shall establish and maintain a uniform case record, consisting of the assessment, the family service plan, descriptions of care, maintenance or services provided to such child and family and the dates provided, essential data relating to the identification and history of such child and family, all official documents and records of any judicial or administrative proceedings relating to the district's contact with the child and family, and such other records as the department may by regulation require to adequately review case management by the districts. The department shall by regulation specify the format and contents of the uniform case record. Such regulation shall be developed in consultation with public and voluntary authorized agencies, citizens' groups and concerned individuals and organizations, including the state council on children and families. The uniform case record shall be maintained by the district in a manner consistent with the confidential nature of such

records and shall be made available in accordance with applicable provisions of law. When a hearing has been requested in accordance with section twenty-two of this chapter, a copy of the portions of the record relevant to the hearing shall also be made available to the child's parent or guardian, counsel for the parent or guardian, and, if participating in the hearing, the child's attorney.

2. Notwithstanding any other provision of law, uniform case record information governed by this section may be released by the department, social services district or other provider of child welfare services to a person, agency or organization for purposes of a bona fide research project. Identifying information shall not be made available, however, unless it is absolutely essential to the research purpose and the department gives prior approval. Information released pursuant to this subdivision shall not be re-disclosed except as otherwise permitted by law and upon the approval of the department.

3. (a) Notwithstanding any inconsistent provision of law to the contrary, records relating to children pursuant to this section shall be made available to officers and employees of the state comptroller or of the city comptroller of the city of New York, or of the county officer designated bylaw or charter to perform the auditing function in any county not wholly contained within a city, for purposes of a duly authorized performance audit; provided, however, that such comptroller or officer shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit, that such persons shall not use such information in any way except for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information obtained in the conduct of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written

approval.

(b) Any failure to maintain the confidentiality of client-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the department. The department shall establish the grounds for denial of access to records contained under this section and shall recommend as necessary a plan of remediation to the audit agency. Except as provided in this section, nothing in this subdivision shall be construed as limiting the powers of such comptroller or officer to access records which he is otherwise authorized to audit or obtain under any other applicable provision of law. Any person given access to information pursuant to this subdivision who releases data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor.

§ 409-g. Training of child welfare personnel. Within the amounts appropriated therefor, including all federal reimbursement received or to be received on account thereof, the department shall develop and implement a plan for the training of social services district and other authorized agency personnel, including caseworkers involved in the provision or supervision of preventive services, foster care services and adoption services. Such training shall include but need not be limited to:

1. Permanence casework: casework methodologies focused on activities designed to prevent placement in foster care or to shorten the length of stay in care for those children who can be returned home or freed for adoption;

2. Development of skills to facilitate rehabilitation or restoration of the family unit;

3. Development of knowledge and skills in legally freeing children

for adoption and providing adoption services;

4. Development of knowledge and skills to prepare for court processes necessary in foster care and adoption; and

5. Development of case management skills including planning for permanence for each child.

§ 409-h. Assessment of appropriateness of placement in a qualified residential treatment program. 1. (a) Prior to a child's placement in a qualified residential treatment program, as defined in subdivision four of this section, but at least within thirty days of the start of a placement in a qualified residential treatment program of a child in the care and custody or the custody and guardianship of the commissioner of a local social services district or the office of children and family services that occurs on or after September twenty-ninth, two thousand twenty-one, a qualified individual as defined in subdivision five of this section shall complete an assessment as to the appropriateness of such placement utilizing an age-appropriate, evidence-based, validated, functional assessment tool approved by the federal government for such purpose. Such assessment shall be in accordance with 42 United States Code sections 672 and 675a and the state's approved title IV-E state plan and shall include, but not be limited to: (i) an assessment of the strengths and needs of the child; and (ii) a determination of the most effective and appropriate level of care for the child in the least restrictive setting, including whether the needs of the child can be met with family members or through placement in a foster family home, or in a setting specified in paragraph (c) of this subdivision, consistent with the short-term and long-term goals for the child as specified in the child's permanency plan. Such assessment shall be completed in conjunction with the family and permanency team established pursuant to paragraph (b) of this subdivision.

(b) The family and permanency team shall consist of all appropriate biological family members, relatives, and fictive kin of the child, as well as, as appropriate, professionals who are a resource to the family of the child, including but not limited to, the attorney for the child

or the attorney for the parent if applicable, teachers, medical or mental health providers who have treated the child, or clergy. In the case of a child who has attained the age of fourteen, the family and permanency team shall include the members of the permanency planning team for the child in accordance with 42 United States Code section 675 and the state's approved title IV-E state plan.

(c) Where the qualified individual determines that the child may not be placed in a foster family home, the qualified individual must specify in writing the reasons why the needs of the child cannot be met by the child's family or in a foster family home. A shortage or lack of foster family homes shall not constitute circumstances warranting a determination that the needs of the child cannot be met in a foster family home. The qualified individual shall also include why such a placement is not the most effective and appropriate level of care for such child. Such determination shall include whether the needs of the child can be met through placement in:

(i) An available supervised setting, as such term is defined in section three hundred seventy-one of this article;

(ii) If the child has been found to be, or is at risk of becoming, a sexually exploited child as defined in subdivision one of section four hundred forty-seven-a of this article, a setting providing residential care and supportive services for sexually exploited children;

(iii) A setting specializing in providing prenatal, post-partum or parenting supports for youth; or

(iv) A qualified residential treatment program.

2. The qualified individual or their designee shall promptly, but no later than five days following the completion of the assessment, provide the assessment, determination and documentation pursuant to subdivision one of this section to the court, the parent or guardian of the child, and to the attorney for the child and the attorney for the parent, if applicable, and a written summary detailing the assessment findings required pursuant to subdivision one of this section to either the local social services district or the office of children and family services that has care and custody or custody and guardianship of the child, as applicable, and the parties to the proceeding, redacting any information necessary to comply with federal and state confidentiality laws.

3. Where the qualified individual determines that the placement of the child in a qualified residential treatment program is not appropriate after the assessment conducted pursuant to subdivision one of this section, the child's placement shall continue until the court has an opportunity to hold a hearing to consider the qualified individual's assessment and make an independent determination required pursuant to section three hundred ninety-three of this article or sections 353.7, seven hundred fifty-six-b, one thousand fifty-five-c, one thousand ninety-one-a or one thousand ninety-seven of the family court act, as applicable. Provided however, nothing herein shall prohibit a motion from being filed pursuant to sections 355.1, seven hundred sixty-four or one thousand eighty-eight of the family court act, as applicable. If the appropriate party files such motion, the court shall hold a hearing, as required, and also complete the assessment required pursuant to section three hundred ninety-three of this article or sections 353.7, seven hundred fifty-six-b, one thousand fifty-five-c, one thousand ninety-one-a or one thousand ninety-seven of the family court act, as applicable, at the same time. The court shall consider all relevant and necessary information as required and make a determination about the appropriateness of the child's placement based on standards required pursuant to the applicable sections.

4. "Qualified residential treatment program" means a program that is a non-foster family residential program in accordance with 42 United State Code sections 672 and 675a and the state's approved title IV-E state plan.

5. "Qualified individual" shall mean a trained professional or licensed clinician acting within their scope of practice who shall have current or previous relevant experience in the child welfare field. Provided however, such individual shall not be an employee of the office of children and family services, nor shall such person have a direct role in case management or case planning decision making authority for the child for whom such assessment is being conducted, in accordance with 42 United States Code sections 672 and 675a and the state's approved title IV-E state plan.

TITLE 4-B

SERVICES; PREGNANT ADOLESCENTS

Section 409-i. Short title; legislative findings; purpose.

409-j. Case management.

409-k. Case plan and service record.

409-l. Advisory board.

409-m. Reports.

409-n. Implementation.

§ 409-i. Short title; legislative findings; purpose. 1. This title shall be known and may be cited and referred to as the "teenage services act".

2. The legislature finds that the rising incidence of adolescent pregnancy and teenage parenthood is the subject of a widespread and growing concern. As a result of early pregnancy, the attainment of needed education and job skills is often curtailed. Coupled with the added responsibilities accompanying parenthood, these young families are often locked into long term public dependency. Studies have confirmed that up to sixty percent of the current aid to families with dependent children cases in New York state are headed by mothers who were teenagers when they gave birth to their first child. In fact, the predominant cause of welfare dependency in New York state may well be due to the result of teenage pregnancy and adolescent motherhood. The objective of this title is to increase the potential of these youths to become financially independent by helping the teenager to complete her education, and receive sufficient manpower skills for participation in the labor market.

The department of social services is not only statutorily required to provide financial support to these dependent teenagers and their children, but also has equal responsibility to provide personal counselling and support services needed to strengthen family life and provide opportunities for economic independence. In order to facilitate

accessibility to the full range of needed services, case management responsibilities should be assigned to appropriate local social services staff or to authorized agencies outside of the department. Any reluctance or refusal on the part of the teenager to participate in a program of services shall not carry any threat of fiscal sanctions as regards public assistance benefits. In the event that a teenager refuses to participate, it shall be the responsibility of the local social services district to make continued and repeated efforts to engage the teenager in a counselling relationship which has as its result a mutually agreed upon service plan which meets the objectives of this title.

Therefore, this title provides for the establishment of a service case management system in order to strengthen the service role of the department of social services. Local social services districts shall be required to separate public assistance cases involving pregnant adolescents and teenage mothers under eighteen years of age, and assign ongoing case management services for such caseloads to appropriate staff responsible for service delivery. By defining such specialized caseloads, personal counselling and provision of needed community-based support services will be facilitated. Such case management activities shall also include the follow-up and evaluation of services rendered.

The enactment of the provisions of this title shall maximize the effectiveness, efficiency and accountability of support services provided on behalf of pregnant adolescents and teenage parents under eighteen years of age, thereby reducing the long-term dependency needs of this youthful population.

§ 409-j. Case management. 1. As used in this title, "case management" shall refer to a method of providing necessary prevention and support services, directly or by purchase of services, to recipients of public assistance and shall require the facilitating of such services for the purpose of insuring family stability and assistance in achieving the greatest degree of economic independence.

2. Appropriate local social services staff shall be designated as responsible on a case by case basis, for the assessment of services needed by the adolescent or teenage recipient to achieve defined service goals, and for the planning and referral of services and follow-up activities, including the monitoring and evaluation of services provided. Designated case management staff shall be responsible for performing such activities for a specified period prescribed pursuant to department regulations dependent on such factors as age, education and job skills attainment of the individual, household size and stability of the family unit.

3. When referrals to services are provided under other state-funded programs or are directly purchased by the social services district, the district may request that the provider obtain and transmit to the district the information necessary to perform the case management function.

4. The provisions of this title shall apply to those cases involving pregnant adolescents and teen parents in receipt of public assistance, including any males and females under eighteen years of age who are designated payees of their own cases, payees of their children's cases or those public assistance recipients under eighteen years of age identified pursuant to rules and regulations as at-risk youth needing prevention services, where appropriate. At local option, case management services may be provided to those cases headed by persons eighteen years of age or older but under twenty-one years of age.

5. In the event that an adolescent or teenage recipient refuses to accept services identified by social services district staff as needed by the adolescent or teenager, such refusal shall not carry any threat of fiscal sanctions.

6. Case records developed by social services districts and other agencies for persons eligible for or receiving services pursuant to the provisions of this section shall be confidential and maintained in accordance with the provisions of section one hundred thirty-six of this chapter and the regulations of the department.

§ 409-k. Case plan and service record. 1. With respect to each individual who is identified as requiring case management services pursuant to this title, the social services district shall, within thirty days of such identification, perform or have performed an initial joint assessment with the individual, and other persons where appropriate, for the purpose of identifying those problems that have an impact on family stability and hinder the potential for economic independence. A social services district shall prior to implementing the provisions of this title submit a plan for a service case management system to the commissioner for approval.

2. Upon completion of the assessment provided in subdivision one of this section, the social services district shall, in consultation with the individual, establish and maintain or have established and maintained a case plan and service record prescribed pursuant to regulations of the department which shall include at least the following:

(a) identification of short term and long range goals which will ameliorate the problems indicated in subdivision one of this section. Such identification shall also include an estimate of the time period necessary to meet these goals;

(b) identification of services needed by the client, and a description of the available resources in the community to meet identified needs; if services are not available the record should reflect such;

(c) documentation of the arrangements made for the referral of the client to service providers;

(d) listing of all services rendered, both direct and those provided by other public and private agencies in the community;

(e) follow-up action taken to assure clients are in receipt of services, and any actions taken to remove any existing barriers which impede the maximum efficiency of service delivery; and

(f) recordation of the types, cost and auspices of services provided.

3. The case plan and service record shall be reviewed and may be revised, in consultation with the individual, at least once every six

months after the plan and record have been prepared. Such review shall include an evaluation of the effectiveness of services rendered and any necessary revisions in goals or planned services as they meet the objectives indicated in paragraph (a) of subdivision two of this section.

4. The case plan and service record shall include information for the purpose of obtaining information regarding services rendered and the cost of such services based on assessed values or the value of services rendered, where no fees are charged as in other publicly financed programs together with such other information as may be required by rules and regulations of the department.

5. The department is authorized and directed to make such rules and regulations as are necessary to carry out the provisions of this title.

§ 409-l. Advisory board. An advisory board shall be established by the commissioner to assist in the development and implementation of the case management provisions. It will be the responsibility of this board to assist in the development of various service models that local social services districts shall employ, assist in the formulation of appropriate procedures for evaluating such case management services, and determine the fiscal impact of such services as defined in section four hundred nine-j of this title. Appointments to the advisory board shall be obtained from public and private organizations providing teenage and child welfare services.

§ 409-m. Reports. 1. The commissioner shall prepare, for inclusion in the annual report required by subdivision (d) of section seventeen of this chapter to be filed with the governor and the legislature prior to December fifteenth of each year, a progress report on the planning and implementation of the provisions of this title.

2. The report shall contain, but not be limited to, information reported statewide and by districts, the number of individuals certified

as eligible for services under this title, and those for whom services were rendered and expenditures made for services identified by type, provider, and funding source. Such report shall also include progress made in implementing the provisions of this title with particular reference to efforts made to insure the effectiveness of the case management provisions.

§ 409-n. Implementation. 1. The department shall plan for the implementation of the services case management system during the period from the first day of July, nineteen hundred eighty-four to the thirty-first day of March, nineteen hundred eighty-five.

2. Subject to the appropriation of funds, the provisions of this title shall be implemented from the first day of October, nineteen hundred eighty-five in a select number of representative pilot social services districts which shall be designated by the commissioner in consultation with the advisory board established pursuant to this title, in communities with a higher than state average teen population applying for or receiving public assistance.

3. Subject to the appropriation of funds, social services districts which had not implemented the provisions of this title by the thirty-first day of March, nineteen hundred eighty-seven shall be required to implement the provisions of this title during the period April first, nineteen hundred eighty-seven through March thirty-first, nineteen hundred ninety. The social services districts subject to the provisions of this subdivision shall implement this title in accordance with a schedule to be developed by the department which will ensure statewide implementation by the thirty-first day of March, nineteen hundred eighty-eight.

TITLE 5

DAY CARE FOR CERTAIN CHILDREN

Section 410. Day care; when public welfare official to furnish.

410-a. Day care; when department to furnish.

- 410-aa. Waitlist requirements.
- 410-b. Federal grants.
- 410-bb. Grants to not-for-profit facilities providing day care for children for employee salary and benefit enhancements.
- 410-c. State reimbursement.
- 410-cc. Start up grants for child day care.
- 410-ccc. Child day care facility development.

§ 410. Day care; when public welfare official to furnish. 1. A public welfare official of a county, city or town is authorized, provided funds have been made available therefor, to provide day care at public expense for children residing in his territory who are eligible therefor pursuant to provisions of this title. Such care may be provided only in cases where it is determined, under criteria established by the office of children and family services, that there is a need and that such care is in the best interest of the child and parent; provided however that the public welfare official shall not be required to limit authorized child care services strictly based on the work, training, or educational schedule of the parents or the number of hours the parents spend in work, training, or educational activities. Where the family is able to pay part or all of the costs of such care, payment of such fees as may be reasonable in the light of such ability shall be required.

2. The furnishing of such care is hereby declared to be a proper municipal purpose for which the monies of a county, city or town may be raised and expended. A county, city or town may receive and expend monies from the state, the federal government or private individuals, corporations or associations for furnishing such care.

3. (a) Day care under this title shall mean care in a group facility, in a family home, in a group family day care home or in a day care center project as defined in title five-a of this article for part of the day. Day care may be provided by a social services official either directly or through purchase. Purchase of such care may be made only from a private non-profit corporation or association except when the

commissioner shall have approved the purchase of such care from private proprietary facilities by a social services official who has demonstrated that conveniently accessible non-profit facilities are inadequate to provide required care. Purchase of such care may also be made from a school district in accordance with state and federal requirements pursuant to a contract between the social services district and the school district.

(b) Care under this title may be provided only in group facilities, family homes, group family day care homes or in a day care center project as defined in title five-a which are operated in compliance with applicable regulations of the office of children and family services. A group facility shall include a public school which provides day care pursuant to this subdivision.

(c) Except as hereinafter provided, care under this title shall not include care, supervision, training or participation in kindergartens, nursery schools or other schools, classes or activities operated or conducted by public or private schools. However such care shall include day care provided by a school district pursuant to the provisions of this subdivision and subdivision thirty-three of section sixteen hundred four of the education law in accordance with a contract entered into between such school district and a social services district.

(d) The commissioner shall encourage social services districts and day care providers to offer flexible hours of day care. Each provider may provide a flexible schedule in accordance with the rules and regulations of the commissioner and an application for day care services shall not be denied solely by reason of the time of day or days that care will be required provided that an available day care provider can accommodate such hours or days of care in accordance with such regulations.

4. The provisions of this title shall not apply to child care assistance provided under title five-C of this article.

§ 410-a. Day care; when department to furnish. Any inconsistent provision of law notwithstanding, if and so long as federal funds are available for the care provided pursuant to the provisions of this section, and to the extent of such funds and state funds appropriated or

made available therefor, the department shall be authorized to provide day care, through appropriate arrangements and cooperative agreements with the state departments of education and agriculture and markets, approved by the director of the budget, in public schools operated by school districts and in facilities operated by or for the state department of agriculture and markets for children who are receiving family assistance or who are former or potential recipients of such aid in accordance with the regulations of the department, including only such children who are in pre-kindergarten programs of such schools or who are children of migrant workers.

*** § 410-aa. Waitlist requirements.** 1. Each social services district shall maintain a waiting list of families who have applied for child care assistance pursuant to this title but have not been authorized for such assistance due to a lack of available funds under either the district's allocation from the state child care block grant program or any local funds appropriated for such program. Such waiting list shall contain:

- (a) the date the child care assistance was requested;
- (b) the date the eligibility determination or redetermination was made;
- (c) the age of the child or children the assistance was requested on behalf of;
- (d) whether the family was a new applicant or recertifying; and
- (e) the total number of families on such waiting list.

2. The office shall post annually on their website the total number of families on the waitlist for each social services district.

3. (a) Each social services district shall collect data regarding the families who applied for child care assistance pursuant to this title, specifying:

- (i) the number of families who were denied because they were determined ineligible for assistance, including: (A) the family size, (B) the income of those families, where available; and (C) the age of the child, where available;

(ii) the number of families who were placed on a waitlist, including: (A) the family size; (B) the income of those families, where available; and (C) the age of the child, where available; and

(iii) the number of families who received such assistance, including: (A) the family size; (B) the income of those families, where available; and (C) the age of the child, where available.

(b) Each social services district shall provide the information collected pursuant to paragraph (a) of this subdivision to the office annually. The office shall re-post this information on their website upon receipt.

* NB Effective October 1, 2026

§ 410-b. Federal grants. 1. The department of taxation and finance is authorized to accept and receive from the federal government any moneys which the federal government shall offer to the state for or with respect to the construction, maintenance or operation of facilities for day care for children, under or pursuant to any federal law heretofore or hereafter enacted authorizing grants to the state for such purpose or similar purposes, including payments to political subdivisions of, and any public agencies in the state.

2. The department of social welfare is hereby designated and empowered to act as the agent of the state in carrying out the provisions of any such federal law with respect to such day care facilities in this state.

3. Any and all such grants and moneys awarded for assistance to this state under or pursuant to any federal law shall be accepted and received by the department of taxation and finance as custodian thereof and such moneys, so received, shall be deposited by such department of taxation and finance in a special fund or funds and shall be used exclusively for the purposes of any such federal law. Such moneys shall be paid from such fund or funds on the audit and warrant of the comptroller upon vouchers certified or approved by the commissioner of welfare.

4. Any federal funds made available to the state for day care facilities shall be retained by the state.

§ 410-bb. Grants to not-for-profit facilities providing day care for children for employee salary and benefit enhancements. 1. The legislature finds and declares that a crisis exists in the availability and quality of child day care in New York state and that this crisis poses a danger both to the welfare and safety of the children and to the productivity of this state's workforce; that inadequate salaries and in many cases nonexistent benefit packages have substantially contributed to the existing crisis by precluding day care centers from recruiting and retaining necessary teaching and supervisory staff; that an extremely high turnover rate has interfered in many instances with the ability of day care centers to comply with regulatory requirements and to properly serve the children in their care; and that because of these extraordinary circumstances New York state must intervene and provide assistance for recruitment and retention of child care workers. The legislature recognizes that a long-term solution to this crisis will require cooperative efforts among the business community, local and state governments and families.

2. Within amounts appropriated specifically therefor, and after deducting funds as specified in subdivision three of this section the commissioner shall allocate funds to local social services districts for grants to eligible not-for-profit day care centers for retention and recruitment of teaching and supervisory staff, as follows:

(a) a city social services district with a population in excess of one million shall be allocated a portion of such funds based on an equal weighting of:

(i) its proportion of the state population of children aged five and under, and

(ii) its proportion of total claims for reimbursement received by the department by May thirty-first, nineteen hundred eighty-eight for the low income, transitional and teen parent day care programs authorized by chapter fifty-three of the laws of nineteen hundred eighty-seven.

(b) all other eligible local social services districts shall be

allocated the remaining portion of funds based on each district's proportionate share of licensed not-for-profit day care capacity relative to the total capacity of all such other eligible districts.

3. Five percent of the funds appropriated for such recruitment and retention purposes shall be reserved for administration of the program and allocated as follows:

(a) each local social services district shall be allocated an amount equivalent to five percent of the funds it receives under paragraphs (a) and (b) of subdivision two of this section, provided that no district shall receive an amount less than twenty-five hundred dollars nor greater than one hundred fifty thousand dollars, and

(b) remaining funds shall be allocated to the department. In the event that a not-for-profit child care resource and referral agency or the department distributes funds in an eligible district, as provided herein, such agency or department may retain the amount that otherwise would be available to the eligible district.

4. Not later than thirty days following the effective date of this section, the commissioner shall notify local social services districts of the amounts allocated to each district and provide forms for the collecting of information pursuant to this section.

5. For the purposes of this section, an eligible district shall mean a local social services district that is providing, as of the effective date of this section, or which shall agree to provide in such written form and by such date as shall be acceptable to the department, subsidized day care services under the special day care services program authorized by chapter fifty-three of the laws of nineteen hundred eighty-eight.

6. Eligible districts may apply on or before the ninetieth day following the effective date of this section to receive such allocated funds by submitting to the department a plan on forms provided by the department. Such plan shall be developed by the local social services commissioner in consultation with directors of participating eligible day care centers, as such term is defined herein. Such plan shall

include: methods to increase the amount of day care provided for families having an income at or below two hundred percent of the federal poverty level in such district; proposed steps to be taken to sustain gains in recruitment and retention of staff achieved by funds provided herein; information specified in paragraph (c) of subdivision seven of this section; and a proposed allocation of funds to eligible day care centers based on the following factors:

(a) forty percent of the funds allocated to such district shall be distributed to each eligible center based on such center's share of the total full time equivalent teaching and supervisory staff of such centers in the district as a whole;

(b) forty percent of the funds allocated to such district shall be distributed to each eligible center based on such center's share of the number of children from families having an income at or below two hundred percent of the federal poverty level receiving day care services in all such centers in the district, regardless of whether such children are receiving subsidized care; and

(c) notwithstanding any other provision of this subdivision, twenty percent of the funds allocated to such district shall be distributed to some or all eligible centers in a manner to further improve recruitment and retention of qualified staff. Distributions under this paragraph shall be based on factors including, but not be limited to seniority; educational qualifications; worker income; benefit levels, vacancy and turnover rates; or enhancement of distributions pursuant to paragraph (a) or (b) of this subdivision.

The commissioner shall make copies of proposals available to the public upon request.

7. For the purposes of this section, an eligible day care center means a not-for-profit center which provides services for children in single or double sessions for six or more hours per day for five or more days per week and holds a permit or certificate issued pursuant to (i) the provisions of section three hundred ninety of this article, or (ii) the New York city health code as authorized by section five hundred fifty-eight of the New York city charter; provided, however, that:

(a) a center whose permit has been denied, suspended or revoked, or

which is found in any twelve month period preceding or following the date of the allocation of funds made pursuant to subdivision two of this section to be in violation of section three hundred ninety of this article after a hearing conducted as provided therein or after decision by any court of competent jurisdiction, shall not be eligible to receive funds pursuant to this section;

(b) the existence of a current contract for purchase of day care services between an eligible district and a center may not be required as a precondition to receive such funds, but such center shall agree to accept children subsidized by the district in the next available space after receipt of a request from the district to place a child in such center;

(c) each such center must provide to the local social services district the following information on forms provided by the department:

(i) child care capacity, by ages of children;

(ii) the number of children in such center, by ages, whose families have incomes at or below two hundred percent of the federal poverty level, regardless of whether such children are receiving subsidized care;

(iii) the number of children specified in subparagraph (ii) of this paragraph receiving subsidies and the type of subsidy;

(iv) a schedule of fees charged for services;

(v) the total annual revenue from all sources, including fees, donations, grants, revenue from local governments and revenue from state agencies;

(vi) the total annual expenditures for rent or mortgage payments; equipment, property, liability and other insurance; utilities; food; supplies and materials; and

(vii) total annual expenditures for salaries and benefits, including the number, title, qualifications and salary levels of existing staff and types and amounts of benefits; and

(d) each eligible day care center must agree, to the maximum extent feasible, to enhance its future revenues to sustain the level of staff salary and benefits as provided herein.

8. Should an eligible district not apply for such funds, the commissioner may contract with a not-for-profit child care resource and

referral agency as such term is defined in title five-B of this article which is serving such district to distribute such funds allocated to the district in the same manner as is required of an eligible district in accordance with the other provisions of this section. If two or more not-for-profit child care resource and referral agencies are serving such district, preference shall be given to the agency or agencies with existing contracts with the commissioner. If such agency does not exist or declines to participate, the department shall disburse funds in the manner as is required of an eligible district pursuant to this section.

9. A plan developed and submitted to the department pursuant to the provisions of this section shall be considered approved unless, within thirty days of the receipt of such plan, the department notifies the eligible district or agency that the plan is not approved and specifies in writing the basis for such disapproval. The commissioner shall make allocated funds and administrative funds available as advances to eligible districts whose plans have been approved pursuant to this section.

10. Eligible districts shall make allocated funds available as advances to eligible day care centers in accordance with the plan approved by the department. Such districts shall notify the department when all such funds have been disbursed but all such funds must be disbursed not later than October first, nineteen hundred eighty-nine.

11. Any funds allocated to eligible districts or day care centers which cannot be used in the manner as provided herein shall be reallocated among other eligible districts as provided in paragraph (b) of subdivision two of this section.

12. Funds received by eligible day care centers shall be used solely for employee benefits and salary enhancements for teaching and supervisory staff, and shall not be used to supplant or substitute for any other funding available for day care services, or to provide services which eligible day care centers are required to provide pursuant to contracts with the state, local social services districts, authorized agencies, individuals or other organizations.

13. Nothing contained herein shall prevent an eligible district, or any other person or entity, at its discretion, from contributing funds, including administrative funds received pursuant to subdivision three of this section, to the program established pursuant to this section.

14. The department shall: (a) provide or cause to be provided, to the maximum extent feasible, technical assistance to eligible day care centers and districts concerning employee benefit options, long-term planning, management of funds, responsibilities required pursuant to this section, maximization of the use of available subsidy funds including Title XX and Title IV-A of the Federal Social Security Act and such other matters as may be helpful to sustain the level of staff salary and benefits as provided herein;

(b) annually examine cost data concerning rates of payment for day care and establish appropriate recommended fee schedules as guidelines for use by local social services districts in developing comprehensive annual social services program plans;

(c) promulgate regulations not later than July first, nineteen hundred eighty-nine, to establish a maximum rate of payment for day care centers which shall reflect adjustments in the cost of care since the establishment of the maximum rate in effect on January first, nineteen hundred eighty-six. Such maximum rate shall be calculated by applying thereto increases in the cost of living since January first, nineteen hundred eighty-six, updated by the department through December thirty-first, nineteen hundred eighty-nine, and also to the extent possible and based on the availability of such information, factors such as changes in the costs of insurance, rent, utilities and labor and benefits and such other factors the department shall deem appropriate, which exceed such increases in the cost of living, as updated through December thirty-first, nineteen hundred eighty-nine; provided, however, that:

(i) actual payment for day care services rendered shall not exceed the actual cost of such care;

(ii) nothing contained herein shall prevent the department from establishing a rate of payment for day care centers greater than that required pursuant to this subdivision;

(iii) approved rates of payment in excess of the rate established pursuant to this paragraph in effect prior to July first, nineteen hundred eighty-nine shall be continued;

(iv) nothing contained herein shall prevent the department from approving exceptions to the rate of payment established herein to meet specific identified needs of a local social services district;

(v) such regulations may include a higher maximum rate of payment for infant care, or care of children with special needs.

d. Notwithstanding any other section of law to the contrary, by April first, nineteen hundred eighty-nine, the department shall develop guidelines and may, with the approval of the director of the division of the budget grant to local districts for one year waivers to income eligibility standards established pursuant to law for subsidized day care under the special day care services program. Such waivers shall be granted to increase eligibility standards up to twenty-five percent of the federal poverty level above the income eligibility standard established by law as a percentage of the federal poverty level. Waivers shall be granted only upon the submission of documentation establishing that:

(i) the local social services district is serving substantially all eligible families with incomes at or below the established income eligibility standard. A district shall be deemed to be serving substantially all eligible families if it meets the following two criteria: (a) the percentage of eligible children served in the district meets or exceeds the percentage of eligible children served statewide under the special day care services program and (b) the district has provided day care services to any additional children whose families have been identified in such district's outreach program as described in subparagraph (ii) of this paragraph as eligible for and desiring subsidized day care services;

(ii) the local district has established a district-wide outreach program which identifies eligible families who are not receiving subsidized child day care under the special day care services program, and informs all such families of their availability, and assists such families desiring subsidized services to obtain them;

(iii) a family receiving a subsidy under the district's waiver

provisions shall be required to contribute a greater amount towards the cost of care than a family eligible under the established income eligibility standard;

(iv) the local district has included an estimate of the number of children who will be served under the waiver provisions;

(v) the local district has submitted claims to income eligible day care expenses under Title XX of the federal Social Security Act;

(vi) the district has available to it a higher allocation in the current fiscal year than the amount of reimbursement received by such district in the previous fiscal year for subsidized care under the special day care services program.

(e) submit a report to the governor and to the chairmen of the senate finance committee and the assembly ways and means committee not later than December thirty-first, nineteen hundred eighty-nine on the program established pursuant to this section, including the number, amount and recipients of grants in each eligible district; the purposes and uses of such grants; an evaluation of any resulting improvements in recruitment and retention of qualified staff, current local eligibility standards, any use of the waiver process, state cost of increasing the eligibility standards established by law up to twenty-five percent and fifty percent of the federal poverty level on a county by county basis for subsidized day care under the special day care services program and recommendations for long-term solutions to the problems of recruitment and retention of teaching and supervisory staff.

§ 410-c. State reimbursement. 1. (a) Expenditures made by counties, cities, and towns for day care and its administration, and day care center projects, pursuant to the provisions of this title, shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department, as follows: There shall be paid to each county, city or town (1) the amount of federal funds, if any, properly received or to be received on account of such expenditures; (2) fifty per centum of its expenditures for day care and its administration and day care center projects, after first deducting therefrom any federal funds received or to be received on account thereof, and any expenditures defrayed by fees paid by parents or by

other private contributions.

(b) For the purpose of this title, expenditures for administration of day care shall include expenditures for compensation of employees in connection with the furnishing of day care, including but not limited to costs incurred for pensions, federal old age and survivors insurance and health insurance for such employees; training programs for personnel, operation, maintenance and service costs; and such other expenditures such as equipment costs, depreciation and charges and rental values as may be approved by the department. It shall not include expenditures for capital costs. In the case of day care purchased from a non-profit corporation constituting an eligible borrower pursuant to title five-a of this article, expenditures shall include an allocable proportion of all operating costs of such facility as may be approved by the department including but not limited to the expenditures enumerated in this paragraph (b) and expenditures for amortization, interest and other financing costs of any mortgage loan made to such non-profit corporation.

2. (a) Claims for state reimbursement shall be made in such form and manner and at such times and for such periods as the department shall determine.

(b) When certified by the department, state reimbursement shall be paid from the state treasury upon the audit and warrant of the comptroller out of funds made available therefor.

3. The department is authorized in its discretion to approve and certify to the comptroller for payment, advances to counties, cities or towns in anticipation of the state reimbursement provided for in this section.

4. Payment of state reimbursement and advances shall be made to local fiscal officers as in the case of state reimbursement for public assistance and care under other provisions of this chapter.

5. (a) As used in this subdivision "school age child day care programs" shall mean programs which offer care to school age children under the age of fourteen before or after the period when these children

are in school. Such programs may include, but are not limited to, programs provided in school buildings in accordance with paragraph (i) of subdivision one of section four hundred fourteen of the education law.

(b) The commissioner shall, within appropriations made available therefor, select proposed school age child day care programs which shall be eligible to receive an award of no more than twenty-five thousand dollars for start up or expansion costs, including planning, rental, operational and equipment costs, or minor renovations identified as being necessary in order for the program to comply with applicable state or local building, fire safety or licensing standards, based on plans submitted to him. The commissioner shall give preference to those areas of the state which are significantly underserved by existing school age child day care programs and to those programs which involve parents in the development and implementation of programs. The commissioner shall publicize this availability of funds to be used for purposes of this subdivision in awarding grants. Plans may be submitted by private not-for-profit corporations, organizations or governmental subdivisions.

(c) Notwithstanding any other provisions of law, social services districts shall be authorized to purchase services which are to be provided pursuant to this subdivision from programs which have been approved by the commissioner to receive funds pursuant to this subdivision.

6. Any other provision of law notwithstanding, and within amounts appropriated therefor, the department shall have authority to make start-up grants to prospective programs that will provide child day care, as such term is defined in section three hundred ninety of this article, from any funds available for such purpose.

§ 410-cc. Start up grants for child day care. The commissioner shall provide funds to start up grants to not-for-profit organizations or corporations for the development of new or expanded all day child day care programs including costs related to planning, renting, renovating, operating, and purchasing equipment. The commissioner shall establish guidelines including, but not limited to, allowable costs, and criteria

for eligibility for grants giving preference to those child day care providers who will, to the maximum extent feasible, target services to households having incomes up to two hundred percent of the federal poverty standard. The commissioner shall publicize the availability of funds. No awards shall be granted which exceed twenty-five hundred dollars for a new family day care provider or new group family day care provider, and one hundred thousand dollars for a new child day care center. Child care resource and referral agencies may receive family day care start up grants not to exceed two thousand five hundred dollars per new provider if the agency trains such new family provider and thereby expands the supply of family day care programs in the community. The commissioner shall give preference to those communities which are significantly underserved by existing programs and to those programs which and those providers who will serve infants under two years of age.

§ 410-ccc. Child day care facility development. 1. Notwithstanding any other provision of law, of the moneys appropriated to the department in section one of chapter fifty-four of the laws of nineteen hundred ninety-four, enacting the capital projects budget, four million seven hundred fifty thousand dollars shall be available as follows: seven hundred fifty thousand dollars for child care project development grants and related administrative expenses; the remaining four million dollars shall be available for the child care facilities construction program as defined in section sixteen-g of the urban development corporation act; of this amount, no less than three million dollars shall be available for child care construction grants and related administrative expenses and any remaining funds may be available for child care construction revolving loans and loan guarantees, and related administrative expenses. The amounts available for the child care facilities construction program, as defined in section sixteen-g of the urban development corporation act, shall be suballocated to the urban development corporation pursuant to this section.

Up to five percent of the moneys available pursuant to this subdivision may be used for payments to the department or other state agencies or authorities, and the urban development corporation for

administrative expenses required to develop requests for proposals and to approve contracts for child care construction projects pursuant to this section and/or section sixteen-g of the urban development corporation act. The director of the division of the budget shall approve such payments.

2. Child care project development grants. The department shall develop a request for proposals to provide grants to not-for-profit organizations, including, but not limited to, child care resource and referral programs, local development corporations, neighborhood preservation companies and rural preservation companies as defined in section nine hundred two of the private housing finance law, to support pre-development planning, management, and coordination of activities, leading to the development of child day care centers in under-served areas meeting the needs of low-income working families. Such activities may include: (a) design studies and services and other development or redevelopment work in connection with the design and development of child day care centers; and (b) studies, surveys or reports, including preliminary planning studies to assess a particular site or sites or facility or facilities for the development of child day care centers.

(c) In determining grants to be awarded, the department shall consider the following: (i) that a not-for-profit organization applying for a grant under this subdivision is a bonafide organization which shall have demonstrated by its immediate past and current activities its ability to lead or to assist in the development of projects, such as child day care centers meeting the needs of low-income families; (ii) the need for day care centers in the area; (iii) the potential viability for a child day care center to succeed in the area; and (iv) such other matters as the department determines necessary.

(d) Grants shall be awarded to eligible entities where the department identifies an insufficient supply of child day care programs. Grants awarded pursuant to the request for proposals shall not exceed seventy-five thousand dollars per project.

3. Child care construction grants. (a) The child care construction grants awarded pursuant to this section and section sixteen-g of the urban development corporation act shall be available for not-for-profit

child care facilities construction projects owned or to be owned by not-for-profit corporations for use as child day care centers that will be duly approved, licensed, inspected, supervised, and regulated as may be determined to be necessary and appropriate by the department, except that with respect to child day care centers located in the city of New York, such child day care centers will be duly approved, licensed, inspected, supervised, and regulated as may be determined to be necessary and appropriate by the commissioner of the department of health of the city of New York.

(b) Grants shall be made through contracts to not-for-profit corporations for child care facilities construction projects pursuant to a request for proposal process jointly developed by the department and the urban development corporation in consultation with the department of economic development. The department shall receive, initially review, and assess applications to determine which projects should be referred to the urban development corporation and to rank by groups, the referred projects according to the capacity of such projects to meet identified needs for child day care. In assessing such applications, the department shall consider: (i) the need for day care services in the area; (ii) the potential viability for a child day care center to succeed in the area; (iii) the qualifications of the proposed provider to operate a child care center; (iv) the potential for meeting applicable regulatory requirements; (v) the appropriateness of the site for licensing as a day care center and (vi) such other matters as the department determines necessary.

(c) Upon the timely completion of the department's initial review and selection of applications meeting criteria, the department shall immediately submit such selected applications and the group rankings of such applications to the urban development corporation which, in consultation with the department of economic development, shall select award recipients. No later than upon submission of the selected applications, the department shall also suballocate all moneys appropriated for such purposes to such corporation.

4. Programs conducted pursuant to this section of law are limited to the amounts appropriated therefor.

TITLE 5-A

YOUTH FACILITIES IMPROVEMENT ACT

Section 410-d. Short title: policy and purposes of title.

410-e. Definitions.

410-f. Regulation of eligible borrowers.

410-g. Mortgage loans.

410-h. Conditions and security for loans.

410-i. Rates and admission of children.

410-j. Transfer of real property.

410-k. Supervision.

410-l. Foreclosures and judgments.

410-m. Fees and charges.

410-o. Separability.

§ 410-d. Short title: policy and purposes of title. This title shall be known, and may be cited and referred to, as the "Youth Facilities Improvement Act".

There is a serious shortage throughout the state of facilities suitable for use for the care of children especially those of pre-school age and primary school age whose parents are unable to provide such care for all or a substantial part of the day or post-school day. A similar shortage of residential child care facilities also exists. Existing day care and residential child care facilities are overcrowded with long waiting lists. Many such facilities are so located that they are not accessible to families in need of such services. The absence of adequate day care and residential child care facilities is contrary to the interest of the people of the state, is detrimental to the health and welfare of the child and his parents and prevents the gainful employment of persons, who are otherwise qualified, because of the need to provide such care in their home.

It is the purpose of this article to encourage the timely construction and equipment of such facilities with mortgage loan participation by the New York state housing finance agency. The provision of such facilities

is hereby declared to be a public purpose which it is the policy of the state to encourage.

§ 410-e. Definitions. As used in this title the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

1. "Board". The state board of social welfare.
2. "Commissioner". The commissioner of social services of the state of New York.
3. "Department". The state department of social services.
4. "Eligible borrower". A non-profit corporation organized under the laws of the state of New York which is authorized to care for children and which has entered into a regulatory agreement in accordance with the provisions of section four hundred ten-f of this title.
5. "Project." "Youth facilities project." A specific work or improvement, including lands, buildings, improvements, fixtures and articles of personal property acquired, constructed, rehabilitated, managed, owned and operated by an eligible borrower to provide day care in the manner prescribed by the department for children of pre-school and primary school age or to provide residential child care in the manner prescribed by the rules of the board for children of pre-school, primary school or secondary school age, or to provide any combination of the foregoing, and for facilities incidental or appurtenant thereto.
6. "Project cost". "Youth facilities project cost". The sum total of all costs incurred by an eligible borrower as approved by the commissioner as reasonable and necessary for carrying out all works and undertakings and providing all necessary equipment for the development of a project exclusive of any private or federal, state or local financial assistance available for and received by an eligible borrower for the payment of such project cost. These shall include but are not

necessarily limited to the carrying charges during construction or rehabilitation up to and including the occupancy date, working capital not exceeding three percentum of the estimated total cost or three percentum of the actual total final cost, whichever is larger, the cost of all necessary studies, surveys, plans and specifications, architectural, engineering, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, site preparation and development, construction, reconstruction and equipment, including fixtures, equipment, and articles of personal property required for the operation of the project, the reasonable cost of financing incurred by the eligible borrower in the course of the development of the project, up to and including the occupancy date, the fees imposed by the commissioner and by the New York state housing finance agency; other fees charged, including any premium payments to the youth facilities project guarantee fund created by the youth facilities project guarantee fund act, and necessary expenses incurred in connection with the initial occupancy of the project, and the cost of such other items as the commissioner may determine to be reasonable and necessary for the development of a project, less any and all rents and other net revenues from the operation of the real property, improvements or personal property on the project site, or any part thereof, by the eligible borrower on and after the date on which the contract between the eligible borrower and the New York state housing finance agency was entered into and prior to the occupancy date.

7. "Occupancy date". The date defined in the documents providing for a mortgage loan between an eligible borrower and the New York state housing finance agency.

8. "Youth facilities development fund company". A company incorporated and organized pursuant to subdivision two of section four hundred ten-n of this title.

9. "Youth Facilities Center" means a facility suitable to provide day care for children of pre-school age and primary school age or to provide residential child care for children of pre-school, primary school or secondary school age or to provide any combination of the foregoing,

which has been approved by the state department of social services.

§ 410-f. Regulation of eligible borrowers. 1. Every eligible borrower, as a condition precedent to borrowing funds from the agency, shall enter into a regulatory agreement with the commissioner which shall provide:

(a) that the real property or other assets mortgaged or otherwise pledged to the agency shall not be sold, transferred, encumbered or assigned until the eligible borrower shall have repaid in full all obligations under the mortgage of the agency and has paid such other obligations as may be required by the commissioner provided, however, the provisions of this paragraph (a) shall not apply to any actions taken pursuant to section four hundred ten-1 of this article;

(b) that the eligible borrower will maintain books and records and a system of accounts satisfactory to the commissioner and the agency including but not limited to separate books, records and accounts for (i) all monies advanced to the eligible borrower by the agency or from any other source or sources, public or private, for the construction, reconstruction, rehabilitation, improvement or equipment of the project and (ii) all monies repaid in satisfaction of any indebtedness to the agency or other indebtedness as required by the commissioner; and the eligible borrower agrees that all of its books, records and accounts shall be open to examination by the commissioner and the agency at any time;

(c) that the eligible borrower shall file with the commissioner and the agency such financial statements including an annual report setting forth such information as the commissioner may require;

(d) that the eligible borrower shall not acquire any real property or interest therein for the purpose of constructing, reconstructing, rehabilitating or improving a project without first having obtained from the commissioner a certificate that such acquisition is consistent with the purposes of this article;

(e) that the eligible borrower shall not issue notes, bonds, debentures or other obligations other than for money or property actually received for the use and lawful purposes of the eligible borrower and no such note, bond, debenture or other obligation shall

constitute a lien or encumbrance against the project, or any real property or other asset mortgaged or otherwise pledged to the agency;

(f) that the eligible borrower shall not without first having obtained the written consent of the commissioner:

(i) construct, reconstruct, rehabilitate, improve, alter or repair the project or enter into a contract therefor;

(ii) enter into contracts relating to the management or operation of the project;

(iii) make a guaranty of payment out of monies pledged to the agency or pledge any or all of its assets, income or revenue pledged to the agency to secure payment of its obligations;

(iv) lease a project or a portion thereof to a third party for the purposes of operation;

(v) voluntarily dissolve;

(g) that no member, officer or employee of the corporation which is an eligible borrower shall acquire any interest, direct or indirect, in any property then or thereafter included or planned to be included in a project, nor retain any interest direct or indirect in any property acquired subsequent to his appointment or employment which is later included or planned to be included in a project. If any member, officer or employee of a corporation which is an eligible borrower owns or controls an interest, direct or indirect, in any property included in a project which was acquired prior to his appointment or employment, he shall disclose such interest and the date of acquisition to the corporation and such disclosure shall be entered upon the minutes of such corporation and a copy of such minutes shall be forwarded to the commissioner;

(h) that all income and earnings of the eligible borrower shall be used exclusively for its corporate purposes;

(i) that no part of the net income or earnings of the corporation shall inure to the benefit or profit of any private individual, firm or corporation;

j. That the eligible borrower, in the case of a residential child care center project, will be subject to the visitation, inspection and supervision of the department, and that the eligible borrower, in the case of a day care center project will be subject to the visitation,

inspection and supervision of the department, as to any and all acts in relation to the welfare of children to be performed pursuant to this title;

(k) such other matters as the commissioner or the agency may require;

2. This regulatory agreement shall terminate at any time after the expiration of ten years after the occupancy date upon the consent of the commissioner and upon the repayment in full of all obligations under the mortgage of the agency and of such other obligations as the commissioner may require.

§ 410-g. Mortgage loans. 1. Any eligible borrower may, subject to the approval of the commissioner, borrow funds from the agency and secure the repayment thereof by bond or note and mortgage which shall contain such terms and conditions as may be deemed necessary or desirable by the agency or required by any agreement between the agency and the holders of its notes and bonds, including the right to assignment of rates and charges and entry into possession in case of default, but the operation of such project, in the event of such entry, shall be subject to the regulations of the commissioner.

2. The agency may make contracts to make loans to an eligible borrower in an amount not to exceed the total project cost. Any such loan shall be secured by a first mortgage lien upon all the real property and improvements of which the project consists and may be secured by such a lien upon other real property owned by the eligible borrower, and upon all fixtures and articles of personal property attached to or used in connection with the operation of the project.

3. Any inconsistent provision of law to the contrary notwithstanding, mortgages of an eligible borrower shall be exempt from the mortgage recording taxes imposed by article eleven of the tax law.

§ 410-h. Conditions and security for loans. No loan shall be made by the agency to an eligible borrower until the commissioner has approved

the project and finds that:

1. The eligible borrower has been approved by the commissioner and complied with all the provisions of this title;
2. The plans and specifications conform to the requirements of all laws and regulations applicable thereto and assure adequate light, air, sanitation and fire protection and are satisfactory to him;
3. The estimated revenue of the project or from other funds of the eligible borrower pledged, assigned or otherwise to be made available to the agency will be sufficient to cover all probable costs of operation and maintenance, of fixed charges and such reserves as may be authorized by the commissioner or required by the agency;
4. Provision has been made for the purpose of providing for the payment of the difference between the estimated project cost and the mortgage loan; and in the event the final project cost shall exceed the estimated project cost, the difference between such final project cost and the mortgage loan;
5. The eligible borrower has entered into a regulatory agreement pursuant to section four hundred ten-f of this title.

§ 410-i. Rates and admission of children. 1. An eligible borrower shall, with the approval of the commissioner, fix a schedule of rates to be charged parents, guardians or other persons having legal custody of the child and to social services officials or other authorized agencies for the facilities and services provided by the eligible borrower pursuant to this title. The commissioner upon his own motion, or upon application by the eligible borrower or lienholder may vary the amount of such charge from time to time so as to secure, together with all other income of the eligible borrower pledged, assigned or otherwise made available to the agency, sufficient income to meet, within reasonable limits, all necessary payments by the said eligible borrower of all expenses, including fixed charges, sinking funds and reserves.

2. The facilities and services to be provided by the eligible borrower pursuant to this title shall be available to all children in need thereof.

§ 410-j. Transfer of real property. Notwithstanding any requirement of law to the contrary or any provision of any general, special or local law, charter or ordinance, every executor, administrator, trustee, guardian or other person holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, and the state, its subdivisions, municipalities, all other public bodies, all public officers, persons, partnerships and corporations owning or holding any real property, may grant, sell, lease or otherwise transfer any such real property or interest therein to an eligible borrower and receive and hold any cash, exchange therefor by such an eligible borrower and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the eligible borrower in connection with a project or projects and such sale, lease or transfer may be made without public auction or bidding; providing, however, that where such real property is within an urban renewal area the disposition thereof shall be in accordance with the provisions of paragraph (d) of subdivision two of section five hundred seven of the general municipal law.

§ 410-k. Supervision. 1. The commissioner may from time to time make, alter, amend and repeal rules and regulations for the supervision, examination, regulation and audit of an eligible borrower and for carrying into effect this title, and each eligible borrower shall submit an annual report of its operations to the commissioner and the agency who may examine and audit the books and records of the eligible borrower at any time.

2. The commissioner and the department shall have power to act for and in behalf of the agency in servicing the project mortgage loans of the agency, and to perform such functions and services in connection

with the making, servicing and collection of such loans as shall be requested by the agency.

3. (a) The commissioner and the department may, with respect to any project of which the agency has acquired the fee or otherwise, enter into an agreement with said agency subject to the approval of the director of the budget, for the department, as provided in paragraph (b) hereof, to operate the said project in a manner consistent with the purposes of this title. In such event, the commissioner, on behalf of the department, shall have the power to use any available funds to pay all operating expenses and to comply with all the terms and provisions of the mortgage, as though the mortgage had not been foreclosed, and to comply with the provisions of this title.

(b) Subject to the provisions of the agreement with said agency, the commissioner may contract with any person, firm or corporation which he deems qualified to operate and manage such project and to perform such duties and functions as he may deem necessary.

4. Whenever the commissioner shall be of the opinion that an eligible borrower is failing or omitting, or is about to fail or omit to do anything required of it by law or by order of the commissioner and is doing or is about to do anything, or permitting anything, or is about to permit anything to be done, contrary to or in violation of law or of any order of the commissioner, or which is improvident or prejudicial to the interest of the public, the lienholders, the shareholders, or the occupants, the commissioner may, in addition to such other remedies as may be available, commence an action or proceeding in the supreme court of the state of New York in the name of the commissioner, for the purpose of having such violations or threatened violations stopped and prevented, and in such action or proceeding, the court may appoint a temporary or permanent receiver or both. Such action or proceeding shall be commenced by a petition to the supreme court, alleging the violation complained of and praying for appropriate relief. It shall thereupon be the duty of the court to specify the time, not exceeding twenty days after service of a copy of the petition, within which the eligible borrowers complained of must answer the petition. In case of any default or after answer the court shall immediately inquire into the

facts and circumstances in such manner as the court shall direct in the interest of substantial justice without other or formal pleading. Such other persons or corporations as it shall seem to the court necessary or proper to join as parties in order to make its order or judgment effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that an order or an injunction, or both, issue, or provide for the appointment of a receiver as prayed for in the petition, or grant such other relief as the court may deem appropriate.

§ 410-1. Foreclosures and judgments. 1. In any foreclosure action the commissioner shall be made a party defendant. He shall take all steps necessary to protect the interests of the public therein and no costs shall be awarded against him. Foreclosures shall not be decreed unless the court to which application is made shall be satisfied that the interests of the lienholder or holders cannot be adequately assured except by the sale of the property. In any such proceeding, the court shall be authorized to appoint the commissioner as receiver of the property, or to grant such other and further relief as may be reasonable and proper.

2. Notwithstanding the foregoing provisions of this section, wherever it shall appear that the agency shall have loaned on a mortgage which is a first lien upon any such property, such agency shall have all the remedies available to a mortgagee under the laws of the state of New York, free from any restrictions contained in this section, except that the commissioner shall be made a party defendant and that the commissioner shall take all steps necessary to protect the interests of the public and no costs shall be awarded against him.

3. In the event of a judgment against an eligible borrower in any action not pertaining to the collection of a mortgage indebtedness, there shall be no sale of any of the real property of such eligible borrower except upon sixty days' written notice to the commissioner and the agency. Upon receipt of such notice the commissioner and the agency shall take such steps as in their judgment may be necessary to protect

the rights of all parties.

§ 410-m. Fees and charges. The commissioner may, by regulation, establish and charge to eligible borrowers such fees and charges for inspection, regulation, supervision and audit as to the commissioner may appear just and reasonable in order to recover the departmental costs in performing these functions.

§ 410-o. Separability. If any clause, sentence, paragraph or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

TITLE 5-B

CHILD CARE RESOURCE AND REFERRAL PROGRAM

Section 410-p. Definitions.

410-q. Child care resource and referral program services.

410-r. Child care resource and referral programs.

410-s. State reimbursement.

410-t. Responsibilities of the commissioner.

§ 410-p. Definitions. As used in this title, the term:

1. "Agency" shall mean a not-for-profit corporation or group of not-for-profit corporations. With respect to any county for which no appropriate not-for-profit corporation or group of corporations has submitted a proposal, such term shall mean a statewide or regional not-for-profit corporation which establishes such a corporation or shall mean a local governmental entity which provides the services authorized by this title;

2. "Resource and referral program" shall mean an agency funded pursuant to this title to provide services specified in section four hundred ten-r of this title within a defined geographic area;

3. "Early childhood services" shall mean services which include, but are not limited to, registered, certified or licensed care in family day care homes, group family day care homes, school-age child care programs; head start programs, day care centers; child care which may be provided without a permit, certificate or registration in accordance with this statute; early childhood education programs approved by the state education department; and care provided in a children's camp as defined in section one thousand four hundred of the public health law;

4. "Required resource and referral services" shall mean those services listed in subdivision one of section four hundred ten-q of this title which must be provided by each child care resource and referral program to parents and other guardians, child care and early childhood services providers, employers and communities within the geographic area served by the program, to the extent funds are available for such services;

5. "Enhanced services" shall mean additional or more intensive levels of services as listed in subdivision two of section four hundred ten-q of this title, which an agency agrees to provide in order to receive additional funding pursuant to this title;

6. "Parent" or "Parents" shall mean and include biological and adoptive parents, guardians or other persons in parental relationship to a child.

§ 410-q. Child care resource and referral program services. 1. Each agency approved to receive funding pursuant to this title shall, to the extent funds are available for such purposes, provide the following:

(a) Information and referral services directed at educating parents who contact the agency regarding early childhood services options and methods of selecting the best option for his or her child; referring parents or guardians to early childhood services providers; informing

parents about the availability of financial assistance and tax credits; referral for parents in coordinating part-day early childhood services providers and programs to meet the full-day care needs of parents; referrals for parents of preschool children with handicapping conditions pursuant to section forty-four hundred ten of the education law and section twenty-five hundred forty-two of the public health law; providing written information to those who contact the agency seeking information about early childhood services; maintaining a provider resource file and a file of parents currently seeking early childhood services; and publicizing child care resource and referral services as necessary to assure that the availability of those services are known to the community;

(b) Services directed at expanding the number of available family day care providers and recruiting potential providers; providing information on licensing and registration requirements and available funding sources to potential early childhood services providers and programs; and assisting individuals or organizations to qualify as legal early childhood services providers or programs by providing information on applicable laws and regulations relating to zoning, taxes, insurance, government licensing or registration, and other matters of concern to new providers;

(c) Services directed at maintaining and providing information and resources on early childhood training and other relevant programs for prospective and current providers, including educating child care providers not requiring a license or registration pursuant to section three hundred ninety of this article with information on available training opportunities at the time of enrollment and re-enrollment;

(d) Services directed at developing and maintaining provider data bases to determine service utilization and unmet needs for additional early childhood services;

(e) Assuring access to the United States department of agriculture child care food program for providers in the service area;

(f) Services directed at providing written materials and conducting outreach to employers to encourage their support of child care resource and referral services and other early childhood services; and

(g) Each agency funded herein shall provide services in a manner responsive to the cultural, linguistic and economic characteristics of

the community served.

2. Enhanced services which an agency agrees to provide pursuant to a contract may include one or more of the following:

(a) Services directed at expanding the supply of regulated care in areas where such care is not readily available;

(b) Services directed at enhancing the availability and quality of early childhood services which serve families with particular language, ethnic and cultural backgrounds;

(c) Services directed at meeting the early childhood services needs of children with special needs;

(d) Training or technical assistance services targeted to meet specific local early childhood services needs; and

(e) Services directed at promoting, coordinating and assisting collaborative efforts between early childhood services providers and programs to meet the local need for full-day early childhood services.

§ 410-r. Child care resource and referral programs. 1. The commissioner shall solicit applications for available funds from agencies pursuant to this title in a manner to ensure that agencies in every area of the state will have an opportunity to apply for funds. The commissioner shall designate areas to be served by child care resource and referral services to ensure that services are accessible statewide to the maximum extent feasible.

2. (a) In reviewing the applications, the commissioner shall consider the ability of each applicant to provide the services delineated in section four hundred ten-q of this title. Each agency shall demonstrate that it has a viable plan to offer the required services to families in the area without regard to income, and to attract local support for additions to the required and enhanced services delineated in section four hundred ten-q of this title.

(b) In connection with the review of an application for funds pursuant to this title, the commissioner shall consider requests from agencies for additional funding for the provision of enhanced services.

3. In accordance with the provisions of this title and subject to funds appropriated specifically therefor, the commissioner is authorized to award contracts for the operation of child care resource and referral programs.

§ 410-s. State reimbursement. 1. The commissioner shall allocate annually any state funds, including any available federal funds, appropriated for such purposes among the agencies approved for funding pursuant to this title. The commissioner shall allocate such funds pursuant to a statewide formula developed by the department, which shall be based upon the relative numbers of children, children in working families, and children in low income families in each county, as defined by the department for this purpose. The commissioner shall notify the legislature prior to the implementation of any change or adjustment in the formula.

2. As a condition of receiving funds pursuant to this section, the child care resource and referral program shall demonstrate that it is receiving or has an agreement to receive funds, from sources other than the department pursuant to this title. Funds other than those paid by the department pursuant to this title may come from any other source, including but not limited to the department or other state agencies, federal programs such as the United States department of agriculture child care food program, local agencies, employers or community organizations, so long as such funds are for reasonably related services. To continue to receive funds pursuant to this section, such resource and referral program must demonstrate to the commissioner that it has secured funds or commitments from other sources or that extraordinary circumstances exist which preclude the securing of such funds.

3. All applications approved by the commissioner shall include a commitment to use appropriate accounting and fiscal control procedures which shall include the filing of an annual financial statement which has been audited as required by the department so as to ensure:

(a) the proper disbursement and accounting for funds received; and

(b) appropriate written records regarding the population served and type and extent of services rendered.

§ 410-t. Responsibilities of the commissioner. 1. The commissioner shall monitor the performance of agencies to assure that the terms of the contract are met, that the services are provided in accordance with the intent of this title and that funds are used as required by this title.

2. The commissioner may contract for technical support, planning, coordination and data collection services to assist agencies in offering child care resource services in unserved areas.

3. Beginning July first, nineteen hundred ninety-four and biennially thereafter, the commissioner shall submit a report to the governor and the legislature on the implementation of this title which shall include but not be limited to:

(a) the names of the agencies serving the counties and the counties served by a child care resources and referral agency;

(b) the awards made to each agency;

(c) the characteristics and number of children and families who have received services;

(d) the improvements in the accessibility of early childhood services, the improvement in quality and the expanded supply;

(e) the nature of services contracted for and additional services the agency is able to provide with other funding sources;

(f) the amount of state and federal funding available for services provided under this title; and

(g) the cost to the state to administer the programs funded under this title.

TITLE 5-C

BLOCK GRANT FOR CHILD CARE

Section 410-u. Establishment of block grant for child care.

410-v. Allocation of block grant funds.

- 410-w. Eligible families.
- 410-x. Use of funds.
- 410-y. Maintenance of effort.
- 410-z. Reporting requirements.

§ 410-u. Establishment of block grant for child care. 1. The department shall establish a state block grant for child care comprised of all of the federal funds appropriated for child care under title IV-A of the federal social security act and under the federal child care and development block grant act and any additional federal funds that the state chooses to transfer from the federal family assistance to needy families block grant to the child care and development block grant plus any state funds appropriated for the provision by social services districts of child care assistance to families in receipt of family assistance and other low income families and for activities to increase the availability and/or quality of child care programs.

2. The state block grant for child care shall be divided into two parts pursuant to a plan developed by the department and approved by the director of the budget. One part shall be retained by the state to provide child care on a statewide basis to special groups and for activities to increase the availability and/or quality of child care programs, including, but not limited to, the start-up of child care programs, the operation of child care resource and referral programs, training activities, the regulation and monitoring of child care programs, the development of computerized data systems, and consumer education, provided however, that child care resource and referral programs funded under title five-B of article six of this chapter shall meet additional performance standards developed by the department of social services including but not limited to: increasing the number of child care placements for persons who are at or below eighty-five percent of the state median income, with emphasis on placements supporting local efforts in meeting federal and state work participation requirements, increasing technical assistance to all modalities of legal child care to persons who are at or below eighty-five percent of the state median income, including the provision of training to assist

providers in meeting child care standards or regulatory requirements, and creating new child care opportunities, and assisting social services districts in assessing and responding to child care needs for persons at or below eighty-five percent of the state median income. The department shall have the authority to withhold funds from those agencies which do not meet performance standards. Agencies whose funds are withheld may have funds restored upon achieving performance standards. The other part shall be allocated to social services districts to provide child care assistance to families receiving family assistance and to other low income families.

3. Notwithstanding any other provision of law, expenditures of funds from the block grant shall be governed by this title.

§ 410-v. Allocation of block grant funds. 1. The part of the block that is determined to be available to social services districts for child care assistance shall be apportioned among the social services districts by the department according to an allocation plan developed by the department and approved by the director of the budget. The allocation plan shall be based, at least in part, on historical costs and on the availability and cost of, and the need for, child care assistance in each social services district. Annual allocations shall be made on a federal fiscal year basis.

2. Reimbursement under the block grant to a social services district for its expenditures for child care assistance shall be available for seventy-five percent of the district's expenditures for child care assistance provided to those families in receipt of public assistance which are eligible for child care assistance under this title and for one hundred percent of the social services district's expenditures for other eligible families; provided, however, that such reimbursement shall be limited to the social services district's annual state block grant allocation.

3. Any portion of a social services district's block grant allocation for a particular federal fiscal year that is not claimed by such

district during that federal fiscal year shall be added to that social services district's block grant allocation for the next federal fiscal year.

4. Any claims for child care assistance made by a social services district for services that occurred from October first, nineteen hundred ninety-six through September thirtieth, nineteen hundred ninety-seven, other than claims made under title XX of the federal social security act, shall be counted against the social services district's first block grant allocation.

§ 410-w. Eligible families. 1. A social services district may use the funds allocated to it from the block grant to provide child care assistance to:

(a) families receiving public assistance when such child care assistance is necessary: to enable a parent or caretaker relative to engage in work, participate in work activities or perform a community service pursuant to title nine-B of article five of this chapter; to enable a teenage parent to attend high school or other equivalent training program; because the parent or caretaker relative is physically or mentally incapacitated; or because family duties away from home necessitate the parent or caretaker relative's absence; child day care shall be provided during breaks in activities. Such child day care shall be authorized for the period designated by the regulations of the department;

(b) families with incomes up to eighty-five percent of the state median income who are attempting through work activities to transition off of public assistance when such child care is necessary in order to enable a parent or caretaker relative to engage in work provided such families' public assistance has been terminated as a result of increased hours of or income from employment or increased income from child support payments or the family voluntarily ended assistance; provided that the family received public assistance at least three of the six months preceding the month in which eligibility for such assistance terminated or ended or provided that such family has received child care assistance under subdivision four of this section;

(c) families with incomes up to eighty-five percent of the state median income, which are determined in accordance with the regulations of the department to be at risk of becoming dependent on family assistance;

(d) families with incomes up to eighty-five percent of the state median income, who are attending a post secondary educational program; and

(e) other families with incomes up to eighty-five percent of the state median income in accordance with criteria established by the department.

2. For the purposes of this title, the term "state income standard" means the most recent federal income official poverty line (as defined and annually revised by the federal office of management and budget) updated by the department for a family size of four and adjusted by the department for family size.

3. A social services district shall guarantee child care assistance to families in receipt of public assistance with children under thirteen years of age when such child care assistance is necessary for a parent or caretaker relative to engage in work or participate in work activities pursuant to the provisions of title nine-B of article five of this chapter. Child care assistance shall continue to be guaranteed for such a family for a period of twelve months or, upon approval by the office, may be provided by a social services district for a period up to twenty-four months, after the month in which the family's eligibility for public assistance has terminated or ended when such child care is necessary in order to enable the parent or caretaker relative to engage in work, provided that the family's public assistance has been terminated as a result of an increase in the hours of or income from employment or increased income from child support payments or because the family voluntarily ended assistance; that the family received public assistance in at least three of the six months preceding the month in which eligibility for such assistance terminated or ended or provided that such family has received child care assistance under subdivision four of this section; and that the family's income does not exceed eighty-five percent of the state median income. Such child day care shall recognize the need for continuity of care for the child and a

district shall not move a child from an existing provider unless the participant consents to such move.

3-a. A local social services district may, upon notification to the office, utilize a presumptive eligibility standard to provide child care assistance, in accordance with this subdivision. The office of children and family services shall issue guidance regarding the preliminary eligibility criteria to be used by local social services districts utilizing a presumptive eligibility standard.

(a) A local social services district opting to utilize a presumptive eligibility standard, shall, upon receipt of an application for child care assistance, including all completed documentation required by the district, complete a preliminary eligibility determination.

(b) If the family meets the preliminary eligibility criteria, the family shall be presumed eligible for child care assistance for the period from the date of the application to the date of the final eligibility determination.

(c) A local social services district may utilize child care block grant funds for the presumptive eligibility period to the extent permitted by federal law.

(d) If, upon final determination, the application for child care services is denied, the social services district shall send written notice to the applicant of the determination of ineligibility and of the applicant's right to a fair hearing in accordance with the regulations of the office.

4. (a) Local social services districts shall guarantee applicants who would otherwise be eligible for, or are recipients of, public assistance benefits and who are employed, the option to choose to receive continuing child day care subsidies in lieu of public assistance benefits, for such period of time as the recipient continues to be eligible for public assistance. For the purposes of this subdivision, an eligible applicant for, or recipient of, public assistance benefits and who is employed includes a person whose gross earnings equal, or are greater than, the required number of work hours times the state minimum wage. Recipients of child care subsidies under this subdivision who are no longer eligible for public assistance benefits, shall be eligible for

transitional child care described in paragraph (b) of subdivision one of this section as if they had been recipients of public assistance.

(b) Nothing herein shall be construed to waive the right of an applicant who chooses to receive continuing child day care subsidies pursuant to this section from applying for ongoing public assistance.

5. (a) A family eligible for child care assistance pursuant to subdivision one of this section, unless such family voluntarily ends such assistance, shall be deemed eligible for a period of no less than twelve months from the date of the eligibility determination for such assistance, provided the family income does not exceed eighty-five percent of the state median income. A social services district may extend this period to up to twenty-four months, provided the family income does not exceed eighty-five percent of the state median income.

(b) A family eligible for child care assistance under paragraph (a) of subdivision one of this section shall suffer no break in child care services and shall not be required to reapply for such assistance so long as eligibility under subdivision three of this section continues.

6. Notwithstanding any other provision of law, rule or regulation to the contrary, applicants for child care subsidy assistance shall be encouraged to obtain a child support order and shall be advised of the benefits of obtaining such orders. Provided however, no applicant for, or recipient of, child care assistance under this title shall be required to pursue, or to obtain, a court order for child support as a condition of eligibility for child care assistance.

7. For purposes of determining financial eligibility under this title, the earned income of a dependent child under the age of eighteen, who is not legally responsible for the child or children for which child care assistance is sought, shall be disregarded when determining the eligibility of a household for a child care subsidy.

8. Notwithstanding any other provision of law, rule or regulations to the contrary, a social services district that implements a plan amendment to the child care portion of its child and family services plan, either as part of an annual plan update, or through a separate

plan amendment process, where such amendment reduces eligibility for, or increases the family share percentage of, families receiving child care services, or that implements the process for closing child care cases as set forth in the district's approved child and family services plan, due to the district determining that it cannot maintain its current caseload because all of the available funds are projected to be needed for open cases, shall provide all families whose eligibility for child care assistance or family share percentage will be impacted by such action with at least thirty days prior written notice of the action. Provided, however, that a family receiving assistance pursuant to this title shall not be required to contribute more than one percent of their income exceeding the federal poverty level.

9. Parents and caretakers who are otherwise eligible for child care assistance, and provided with such assistance, shall be able to utilize the assistance when care is necessary to enable them to sleep because they work non-traditional hours and have a child who is under the age of six and not in school for a full school day. The authorization for child care assistance shall be sufficient to allow the parent to obtain up to eight hours of sleep, as needed.

10. For the purposes of this title, the term "state median income" means the most recent state median income data published by the bureau of the census, for a family of the same size, updated by the department for a family size of four and adjusted by the department for family size.

§ 410-x. Use of funds. 1. A social services district shall expend its allocation from the block grant in a manner that provides for equitable access to child care assistance funds to eligible families, and in accordance with the applicable provisions in federal law regarding the portion of the funds which must be spent on families in receipt of family assistance, families who are attempting through work activities to transition off of family assistance and families at-risk of becoming dependent on family assistance and the portion which must be spent on other working low-income families. Each social services district may

spend no more than five percent of its block grant allocation for administrative activities. The term "administrative activities" shall not include the costs of providing direct services.

2. (a) The office of children and family services may establish priorities for the families which will be eligible to receive funding; provided that the priorities provide that eligible families will receive equitable access to child care assistance funds to the extent that these funds are available. The office of children and family services shall ensure that families in receipt of child care assistance as of September thirtieth, two thousand twenty-three who were identified as a priority population under a local social services district's consolidated services plan shall continue to be eligible for such assistance, provided they meet all other applicable eligibility requirements for such assistance.

(d) Each social services district shall collect and submit to the commissioner of the office of children and family services in a manner to be specified by the commissioner of the office of children and family services information concerning the disbursement of child care assistance funds showing geographic distribution of children receiving assistance within the district.

(e) The commissioner of the office of children and family services shall submit a report to the governor, temporary president of the senate and the speaker of the assembly on or before August thirty-first, two thousand one concerning the implementation of this section. This report shall include information concerning the disbursement of child care assistance funds showing geographic distribution of children receiving assistance within the state.

3. Child care assistance funded under the block grant must meet all applicable standards set forth in section three hundred ninety of this article or the administrative code of the city of New York, including child day care in a child day care center, family day care home, group family day care home, school age child care program, or in home care which is not subject to licensure, certification or registration, or any other lawful form of care for less than twenty-four hours per day. The department also is required to establish, in regulation, minimum health

and safety requirements that must be met by those providers providing child care assistance funded under the block grant which are not required to be licensed or registered under section three hundred ninety of this article or to be licensed under the administrative code of the city of New York and to those public assistance recipients who are providing child care assistance as part of their work activities or as community service under title nine-B of article five of this chapter. A social services district may submit to the department justification for a need to impose additional minimum health and safety requirements on such providers and a plan to monitor compliance with such additional requirements. No such additional requirements or monitoring may be imposed without the written approval of the department. Social services districts shall provide, directly or through referral, technical assistance and relevant health and safety information to all public assistance recipients who voluntarily choose to provide child care assistance as part of their work activities under title nine-B of article five of this chapter.

4. The amount to be paid or allowed for child care assistance funded under the block grant shall be the actual cost of care but no more than the applicable market-related payment rate established by the department in regulations. The payment rates established by the department shall 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. Such payment rates shall 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 costs of providing child care for children with special needs.

5. The department shall promulgate regulations under which provision for child care assistance may be made by providing child care directly; through purchase of services contracts; by providing cash, vouchers or reimbursement to the providers of child care or to the parents or caretaker relatives; or through such other arrangement as the department finds appropriate. Such regulations shall require the use of at least one method by which child care arranged by the parent or caretaker

relative can be paid.

6. Pursuant to department regulations, child care assistance shall be provided on a sliding fee basis based upon the family's ability to pay; provided, however, that a family receiving assistance pursuant to this title shall not be required to contribute more than one percent of their income exceeding the federal poverty level.

7. A social services district may suspend the eligibility of a provider who is not required to be licensed or registered under section three hundred ninety of this article to provide child care assistance funded under the block grant, where the provider is the subject of a report of child abuse or maltreatment that is under investigation by child protective services.

8. Notwithstanding any provision of law to the contrary, child care assistance payments made 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 local social services districts for such direct deposit or debit card services in accordance with section twenty-one-a of this chapter.

9. Reimbursement for payment on behalf of children who are temporarily absent from child care shall be paid for up to eighty days per year. Reimbursement for additional absences may be allowable in the case of extenuating circumstances, as determined by the office of children and family services.

10. Differential payment rates for child care services shall be established as required by this subdivision; provided however no provider shall receive an aggregate differential in excess of a limit to be set by the regulations of the office.

(a) Local social services districts shall establish a differential payment rate for child care services provided by licensed or registered

child care providers who provide care to a child or children experiencing homelessness. Such differential payment rate shall be no less than ten percent higher but no greater than fifteen percent higher than the actual cost of care or the applicable market-related payment rate established by the office in regulations, whichever is less.

(b) Local social services districts shall establish a differential payment rate for child care services provided by licensed, registered, or enrolled child care providers who provide care to a child during nontraditional hours. Nontraditional hours shall mean care provided other than between six o'clock ante meridian and seven o'clock post meridian on weekdays. Such differential payment rate shall be no less than ten percent higher but no greater than fifteen percent higher than the actual cost of care or the applicable market-related payment rate established by the office in regulations, whichever is less.

(c) Nothing in this subdivision shall be construed to limit the authority of the office of children and family services to establish additional differential payment rates by regulation.

§ 410-y. Maintenance of effort. 1. Each social services district shall maintain the amount of local funds spent for child care assistance under the child care block grant at a level equal to or greater than the amount the district spent for child care assistance during federal fiscal year nineteen hundred ninety-five under title IV-A of the federal social security act, the federal child care development block grant program and the state low income child care program; provided however, a social services district for a city of a population of a million or more shall spend local funds for child care assistance at an amount no less than three hundred twenty-eight million dollars.

2. If the state fails to meet the level of state and local child care funding necessary to maintain the federal matching funds for child care assistance available under title IV-a of the federal social security act, the state shall withhold funding from those social services districts which spent a lower amount of local funds for child care assistance than the amount required by subdivision one of this section, based on a formula established in department regulations, equal to the

amount of the matching funds which have been lost.

*** § 410-z. Reporting requirements.** Each social services district shall collect and submit to the department, in such form and at such times as specified by the department, such data and information regarding child care assistance provided under the block grant as the department may need to comply with federal reporting requirements.

* NB Effective until October 1, 2026

*** § 410-z. Reporting requirements.** Each social services district shall collect and submit to the office of children and family services, in such form and at such times as specified by the office of children and family services, such data and information regarding child care assistance provided under the block grant as the office of children and family services may need to comply with federal reporting requirements.

* NB Effective October 1, 2026

TITLE 6

CHILD PROTECTIVE SERVICES

- Section 411. Findings and purpose.
412. General definitions.
413. Persons and officials required to report cases of suspected child abuse or maltreatment.
414. Any person permitted to report.
415. Reporting procedure.
416. Obligations of persons required to report.
417. Taking a child into protective custody.
418. Mandatory reporting to and post-mortem investigation of deaths by medical examiner or coroner.
419. Immunity from liability.
420. Penalties for failure to report.
421. Responsibility of the office.
422. Statewide central register of child abuse and maltreatment.
- 422-a. Child abuse and neglect investigations; disclosure.
- 422-b. Local and regional fatality review teams.

- 422-c. Establishment of the child abuse medical provider program (CHAMP).
- 423. Child protective service responsibilities and organization; purchase of service and reimbursement of cost; local plan.
- 423-a. Child advocacy centers established.
- 424. Duties of child protective service concerning reports of abuse or maltreatment.
- 424-a. Access to information contained in the statewide central register of child abuse and maltreatment.
- 424-b. Children in the care of certain public and private agencies.
- 425. Cooperation of other agencies.
- 426. Annual reports.
- 427. Regulations of the commissioner.
- 427-a. Differential response programs for child protection assessments or investigations.
- 428. Separability.

§ 411. Findings and purpose. Abused and maltreated children in this state are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. It is the purpose of this title to encourage more complete reporting of suspected child abuse and maltreatment and to establish in each county of the state a child protective service capable of investigating such reports swiftly and competently and capable of providing protection for the child or children from further abuse or maltreatment and rehabilitative services for the child or children and parents involved.

§ 412. General definitions. When used in this title and unless the specific context indicates otherwise:

1. An "abused child" means a child under eighteen years of age and who is defined as an abused child by the family court act;

2. A "maltreated child" includes a child under eighteen years of age:
(a) defined as a neglected child by the family court act, or
(b) who has had serious physical injury inflicted upon him or her by other than accidental means;

3. "Person legally responsible" for a child means a person legally responsible as defined by the family court act;

4. "Subject of the report" means any parent of, guardian of, or other person eighteen years of age or older legally responsible for, as defined in subdivision (g) of section one thousand twelve of the family court act, a child reported to the statewide central register of child abuse and maltreatment who is allegedly responsible for causing injury, abuse or maltreatment to such child or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child; or a director or an operator of, or employee or volunteer in, a home operated or supervised by an authorized agency, the office of children and family services, or in a family day-care home, a day-care center, a group family day care home, a school-age child care program or a day-services program who is allegedly responsible for causing injury, abuse or maltreatment to a child who is reported to the statewide central register of child abuse or maltreatment or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child;

5. "Other persons named in the report" shall mean and be limited to the following persons who are named in a report of child abuse or maltreatment other than the subject of the report: the child who is reported to the statewide central register of child abuse and maltreatment; and such child's parent, guardian, or other person legally responsible for the child who has not been named in the report as allegedly responsible for causing injury, abuse or maltreatment to the child or as allegedly allowing such injury, abuse or maltreatment to be inflicted on such child;

6. An "unfounded report" means any report made pursuant to this title unless an investigation: (i) commenced on or before December thirty-first, two thousand twenty-one determines that some credible

evidence of the alleged abuse or maltreatment exists; or (ii) commenced on or after January first, two thousand twenty-two determines that a fair preponderance of the evidence of the alleged abuse or maltreatment exists;

7. An "indicated report" means a report made pursuant to this title if an investigation: (i) commenced on or before December thirty-first, two thousand twenty-one determines that some credible evidence of the alleged abuse or maltreatment exists; or (ii) commenced on or after January first, two thousand twenty-two determines that a fair preponderance of the evidence of the alleged abuse or maltreatment exists;

8. "Substance abuse counselor" or "alcoholism counselor" means any person who has been issued a credential therefor by the office of alcoholism and substance abuse services, pursuant to paragraphs one and two of subdivision (d) of section 19.07 of the mental hygiene law.

9. A "publicly-funded emergency shelter for families with children" means any facility with overnight sleeping accommodations and that is used to house recipients of temporary housing assistance and which houses or may house children and families with children.

§ 413. Persons and officials required to report cases of suspected child abuse or maltreatment. 1. (a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist;

chiropractor; podiatrist; resident; intern; athletic trainer; psychologist; registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed behavior analyst; certified behavior analyst assistant; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; employee of a publicly-funded emergency shelter for families with children; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care center worker; school-age child care worker; provider of family or group family day care; employee or volunteer in a residential care facility for children that is licensed, certified or operated by the office of children and family services; or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; all persons credentialed by the office of alcoholism and substance abuse services; employees, who are expected to have regular and substantial contact with children, of a health home or health home care management agency contracting with a health home as designated by the department of health and authorized under section three hundred sixty-five-1 of this chapter or such employees who provide home and community based services under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act who are expected to have regular and substantial contact with children; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

(b) Whenever such person is required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he or she shall make the report as required by this title and immediately notify the person

in charge of such institution, school, facility or agency, or his or her designated agent. Such person in charge, or the designated agent of such person, shall be responsible for all subsequent administration necessitated by the report. Any report shall include the name, title and contact information for every staff person of the institution who is believed to have direct knowledge of the allegations in the report. Nothing in this section or title is intended to require more than one report from any such institution, school or agency.

(c) A medical or other public or private institution, school, facility or agency shall not take any retaliatory personnel action, as such term is defined in paragraph (e) of subdivision one of section seven hundred forty of the labor law, against an employee because such employee believes that he or she has reasonable cause to suspect that a child is an abused or maltreated child and that employee therefore makes a report in accordance with this title. No school, school official, child care provider, foster care provider, residential care facility provider, hospital, medical institution provider or mental health facility provider shall impose any conditions, including prior approval or prior notification, upon a member of their staff specifically required to report under this title. At the time of the making of a report, or at any time thereafter, such person or official may exercise the right to request, pursuant to paragraph (A) of subdivision four of section four hundred twenty-two of this title, the findings of an investigation made pursuant to this title.

(d) Social services workers are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child is an abused or maltreated child where a person comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child.

2. Any person, institution, school, facility, agency, organization, partnership or corporation which employs persons mandated to report suspected incidents of child abuse or maltreatment pursuant to subdivision one of this section shall provide consistent with section four hundred twenty-one of this chapter, all such current and new employees with written information explaining the reporting requirements

set out in subdivision one of this section and in sections four hundred fifteen through four hundred twenty of this title. The employers shall be responsible for the costs associated with printing and distributing the written information.

3. Any state or local governmental agency or authorized agency which issues a license, certificate or permit to an individual to operate a family day care home or group family day care home shall provide each person currently holding or seeking such a license, certificate or permit with written information explaining the reporting requirements set out in subdivision one of this section and in sections four hundred fifteen through four hundred twenty of this title.

4. Any person, institution, school, facility, agency, organization, partnership or corporation, which employs persons who are mandated to report suspected incidents of child abuse or maltreatment pursuant to subdivision one of this section and whose employees, in the normal course of their employment, travel to locations where children reside, shall provide, consistent with section four hundred twenty-one of this title, all such current and new employees with information on recognizing the signs of an unlawful methamphetamine laboratory. Pursuant to section 19.27 of the mental hygiene law, the office of alcoholism and substance abuse services shall make available to such employers information on recognizing the signs of unlawful methamphetamine laboratories.

6. The office of children and family services shall update training issued to persons and officials required to report cases of suspected child abuse or maltreatment to include guidance on identifying an abused or maltreated child when such child is an individual with an intellectual or developmental disability as defined in section 1.03 of the mental hygiene law. Such guidance shall be developed in consultation with the justice center for the protection of people with special needs. Persons and officials required to report cases of suspected child abuse or maltreatment shall have two years from the effective date of this subdivision to receive such updated mandated reporter training.

§ 414. Any person permitted to report. In addition to those persons and officials required to report suspected child abuse or maltreatment, any person may make such a report if such person has reasonable cause to suspect that a child is an abused or maltreated child.

§ 415. Reporting procedure. Reports of suspected child abuse or maltreatment made pursuant to this title shall be made immediately by telephone or by telephone facsimile machine on a form supplied by the commissioner of the office of children and family services. Oral reports shall be followed by a report in writing within forty-eight hours after such oral report. Oral reports shall be made to the statewide central register of child abuse and maltreatment unless the appropriate local plan for the provision of child protective services provides that oral reports should be made to the local child protective service. In those localities in which oral reports are made initially to the local child protective service, the child protective service shall immediately make an oral or electronic report to the statewide central register. Written reports shall be made to the appropriate local child protective service except that written reports involving children being cared for in a home operated or supervised by an authorized agency or the office of children and family services shall be made to the statewide central register of child abuse and maltreatment which shall transmit the reports to the agency responsible for investigating the report, in accordance with section four hundred twenty-four-b of this title. Written reports shall be made in a manner prescribed and on forms supplied by the commissioner of the office of children and family services and shall include the following information: the names and addresses of the child and his or her parents or other person responsible for his or her care, if known, and, as the case may be, the name and address of the program in which the child is receiving care; the child's age, sex and race; the nature and extent of the child's injuries, abuse or maltreatment, including any evidence of prior injuries, abuse or maltreatment to the child or, as the case may be, his or her siblings; the name of the person or persons alleged to be responsible for causing the injury, abuse or maltreatment, if known; family composition, where appropriate; the source of the

report; the person making the report and where he or she can be reached; the actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the child or notifying the medical examiner or coroner; and any other information which the commissioner of the office of children and family services may, by regulation, require, or the person making the report believes might be helpful, in the furtherance of the purposes of this title.

Notwithstanding the privileges set forth in article forty-five of the civil practice law and rules, and any other provision of law to the contrary, mandated reporters who make a report which initiates an investigation of an allegation of child abuse or maltreatment are required to comply with all requests for records made by a child protective service relating to such report, including records relating to diagnosis, prognosis or treatment, and clinical records, of any patient or client that are essential for a full investigation of allegations of child abuse or maltreatment pursuant to this title; provided, however, that disclosure of substance abuse treatment records shall be made pursuant to the standards and procedures for disclosure of such records delineated in federal law. Written reports from persons or officials required by this title to report shall be admissible in evidence in any proceedings relating to child abuse or maltreatment.

§ 416. Obligations of persons required to report. Any person or official required to report cases of suspected child abuse and maltreatment may take or cause to be taken at public expense photographs of the areas of trauma visible on a child who is subject to a report and, if medically indicated, cause to be performed a radiological examination on the child. Any photographs or x-rays taken shall be sent to the child protective service at the time the written report is sent, or as soon thereafter as possible. Whenever such person is required to report under this title in his capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, he shall immediately notify the person in charge of such institution, school, facility or agency, or his designated agent, who shall then take or cause to be taken at public expense color photographs of visible trauma and shall, if medically indicated, cause to be

performed a radiological examination on the child.

§ 417. Taking a child into protective custody. 1. (a) Pursuant to the requirements and provisions of the family court act, a peace officer, acting pursuant to his or her special duties, a police officer, a law enforcement official, or a designated employee of a city or county department of social services, or an agent or employee of an Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter to provide child protective services shall take all appropriate measures to protect a child's life and health including, when appropriate, taking or keeping a child in protective custody without the consent of a parent or guardian if such person has reasonable cause to believe that the circumstances or condition of the child are such that continuing in his or her place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health.

(b) Any physician shall notify the appropriate police authorities or the local child protective service to take custody of any child such physician is treating whether or not additional medical treatment is required, if such physician has reasonable cause to believe that the circumstances or condition of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health.

2. Notwithstanding any other provision of law, the person in charge of any hospital or similar institution shall, where he has reasonable cause to believe that the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health, take all necessary measures to protect the child including, where appropriate, retaining custody of an abused or maltreated child, until the next regular week day session of the family court in which a child protection proceeding pursuant to article ten of the family court act

may be commenced whether or not additional medical treatment is required during that period and whether or not a request is made by a parent or guardian for the return of the child during that period. In all cases where the person in charge of a hospital or similar institution has retained custody of a child pursuant to this section, he shall immediately notify the appropriate local child protective service which immediately shall commence an investigation. In the case of a child in residential care, the child protective service shall notify the appropriate state agency which shall immediately commence an investigation. If no further medical treatment is necessary, the child protective service shall take all necessary measures to protect a child's life and health, including when appropriate, taking custody of a child. Such child protective service shall commence a child protective proceeding in the family court at the next regular week day session of the appropriate family court or recommend to the court at that time that the child be returned to his parents or guardian.

3. Whenever a child protective service takes a child into protective custody and the parent, guardian or custodian of the child is not present, the service shall immediately notify the local police station closest to the child's home of such removal, and shall provide them with a copy of the notice required pursuant to paragraph (iii) of subdivision (b) of section one thousand twenty-four of the family court act. Upon request by the parent, guardian or custodian of the child, the police shall provide such person with a copy of the notice.

§ 418. Mandatory reporting to and post-mortem investigation of deaths by medical examiner or coroner. Any person or official required to report cases of suspected child abuse or maltreatment, including workers of the local child protective service who has reasonable cause to suspect that a child died as a result of child abuse or maltreatment shall report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall issue a preliminary written report of his or her finding within sixty days of the date of death, absent extraordinary circumstances, and his or her final written report promptly, absent

extraordinary circumstances, to the police, the appropriate district attorney, the local child protective service, the office of children and family services, and, if the institution making the report is a hospital, the hospital. The office of children and family services shall promptly provide a copy of the preliminary and final reports to the statewide central register of child abuse and maltreatment.

§ 419. Immunity from liability. Any person, official, or institution participating in good faith in the providing of a service pursuant to section four hundred twenty-four of this title, the making of a report, the taking of photographs, the removal or keeping of a child pursuant to this title, or the disclosure of child protective services information in compliance with sections twenty, four hundred twenty-two and four hundred twenty-two-a of this chapter shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any such person, official, or institution required to report cases of child abuse or maltreatment or providing a service pursuant to section four hundred twenty-four or the disclosure of child protective services information in compliance with sections twenty, four hundred twenty-two and four hundred twenty-two-a of this chapter shall be presumed, provided such person, official or institution was acting in discharge of their duties and within the scope of their employment, and that such liability did not result from the willful misconduct or gross negligence of such person, official or institution.

§ 420. Penalties for failure to report. 1. Any person, official or institution required by this title to report a case of suspected child abuse or maltreatment who willfully fails to do so shall be guilty of a class A misdemeanor.

2. Any person, official or institution required by this title to report a case of suspected child abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure.

§ 421. Responsibility of the office. The office shall: 1. in conjunction with local departments, both jointly and individually, within the appropriation available, conduct a continuing publicity and education program for local department staff, persons and officials required to report including district attorneys, assistant district attorneys, police officers, peace officers, investigators employed in the office of a district attorney, and any other appropriate persons to encourage the fullest degree of reporting of suspected child abuse or maltreatment. Such program shall be developed and implemented in coordination with those established pursuant to section 31.06 of the mental hygiene law, section twenty-eight hundred five-n of the public health law, section thirty-two hundred nine-a of the education law, sections two hundred fourteen-a and eight hundred forty of the executive law and article eleven of this chapter. The program shall include but not be limited to responsibilities, obligations and powers under this title and chapter as well as the diagnosis of child abuse and maltreatment, the procedures of the child protective service, the family court and other duly authorized agencies and the prevention, treatment and remediation of abuse and maltreatment of children in residential care.

2. (a) provide technical assistance to local social services departments regarding case planning and provision of services and performance of other responsibilities pursuant to this title. Such assistance shall be provided on a regular, ongoing basis and shall also be made available as needed, upon request of any such local department.

(b) issue guidelines to assist local social services departments in evaluating and establishing investigative priorities for reports describing situations or events which may pose a clear and present danger to the life, health or safety of a child and which require immediate, personal contact between the local child protective service and the subject of the report, the subject's family, or any other persons named in the report.

(c) issue guidelines to assist local child protective services in the interpretation and assessment of reports of abuse and maltreatment made

to the statewide central register described in section four hundred twenty-two of this article. Such guidelines shall include information, standards and criteria for the identification of evidence of alleged abuse and maltreatment as required to determine whether a report may be indicated pursuant to this article. Provided further, the office of children and family services shall update such guidelines, standards and criteria issued to the local child protective services to include protocols to reduce implicit bias in the decision-making processes, strategies for identifying adverse childhood experiences as defined in paragraph (c) of subdivision one of section twenty-d of this chapter, guidelines to assist in recognizing signs of abuse or maltreatment while interacting virtually, and guidance on identifying an abused or maltreated child when such child is an individual with an intellectual or developmental disability as defined in section 1.03 of the mental hygiene law. The office may utilize existing programs or materials established pursuant to section twenty-d of this chapter.

3. * promulgate regulations setting forth requirements for the performance by local social services departments of the duties and powers imposed and conferred upon them by the provisions of this title and of article ten of the family court act. Such regulations shall establish uniform requirements for the investigation of reports of child abuse or maltreatment under this title. The department shall also issue guidelines which shall set forth the circumstances or conditions under which:

* NB Effective until December 12, 2026

* promulgate regulations setting forth requirements for the performance by local social services departments of the duties and powers imposed and conferred upon them by the provisions of this title and of article ten of the family court act. Such regulations shall establish uniform requirements for the investigation of reports of child abuse or maltreatment under this title. The office of children and family services shall also issue guidelines which shall set forth the circumstances or conditions under which:

* NB Effective December 12, 2026

(a) personal contact shall be made with the child named in the report and any other children in the same household, including interviewing

such child or children absent the subject of the report whenever possible and appropriate;

(b) photographs of visible physical injuries or trauma of children who may be the victims of abuse or maltreatment shall be taken or arranged for;

(c) medical examination of a child who may be a victim of abuse or maltreatment and documentation of findings of such examination, shall be required.

* The department shall promulgate regulations to establish standards for intervention, criteria for case closings, criteria for determining whether or not to initiate a child protective proceeding, and criteria for the formulation of treatment plans and for the delivery of child protective services including specification of the services to be classified as child protective services, which shall also apply to any society for the prevention of cruelty to children which has entered into a currently valid contract with a local department of social services to investigate child abuse or maltreatment reports. The department shall promulgate regulations establishing minimum standards and practices for the delivery of child protective services in connection with monitoring and supervising respondents and their families as ordered by a family court pursuant to section ten hundred thirty-nine and paragraphs (i), (iii), (iv) and (v) of subdivision (a) of section ten hundred fifty-two of the family court act. Such regulations shall also require local child protective services to comply with notification requirements of the family court act in connection with such monitoring and supervisory responsibilities.

* NB Effective until March 12, 2026

* The office of children and family services shall promulgate regulations to establish training requirements for child protective services workers consistent with subdivision five of this section, standards for intervention, criteria for case closings, criteria for determining whether or not to initiate a child protective proceeding, and criteria for the formulation of treatment plans and for the delivery of child protective services including specification of the services to be classified as child protective services, which shall also apply to any society for the prevention of cruelty to children which has entered into a currently valid contract with a local department of social

services to investigate child abuse or maltreatment reports. The office of children and family services shall promulgate regulations establishing minimum standards and practices for the delivery of child protective services in connection with monitoring and supervising respondents and their families as ordered by a family court pursuant to section ten hundred thirty-nine and paragraphs (i), (iii), (iv) and (v) of subdivision (a) of section ten hundred fifty-two of the family court act. Such regulations shall also require local child protective services to comply with notification requirements of the family court act in connection with such monitoring and supervisory responsibilities.

* NB Effective March 12, 2026

4. (a) after consultation with the local child protective services, promulgate regulations relating to staff qualifications for non-supervisory child protective services workers, prescribing any baccalaureate or equivalent college degree and/or relevant human service experience as requirements. Such requirements shall not apply to persons currently employed by such child protective services who were hired before January first, nineteen hundred eighty-six.

(b) after consultation with the local child protective services, promulgate regulations relating to staff qualifications for those assigned to be supervisors of child protective services, prescribing any baccalaureate or equivalent college degree and/or relevant human services experience as requirements. Provided, however, that such regulations shall at a minimum provide that those assigned to be supervisors of child protective services have either a baccalaureate degree or three years of relevant work experience in a human services field. Such requirements shall not apply to persons currently assigned to be a child protective services supervisor who were hired before December first, two thousand six.

5. (a) directly or through the purchase of services, implement, subject to the amounts appropriated therefor, an ongoing, statewide training program for employees of the department and of each local department of social services employed in the provision and supervision of child protective services or in other activities required in accordance with the provisions of this title.

* (b) promulgate regulations setting forth training requirements which shall specify, among other things, that all persons hired by a child protective service on or after April first, nineteen hundred eighty-six shall have satisfactorily completed a course approved by the department within the first three months of employment, in the fundamentals of child protection, provided, however, that on or after April first, two thousand twenty-five, such course may be satisfactorily completed through distance learning methods which evince that all participants are in attendance for the duration of the course and are able to ask questions of the instructor. Each county shall be authorized to adopt a local law, ordinance or resolution to provide for a local department of social services to fulfill the training requirement established by this paragraph through a distance learning method, excluding the annual in service training requirement. Such course shall include at least basic training in the principles and techniques of investigations, including relationships with other investigative bodies, legal issues in child protection, and methods of remediation, diagnosis, treatment and prevention. Such regulations shall also specify that all persons employed by a child protective service on or after December first, two thousand six shall satisfactorily complete six hours of annual in service training, beginning in their second year of employment. Such annual in service training shall include, but is not limited to, review of the protocols for identification and investigation of child abuse and maltreatment, any developments in legal, treatment and prevention issues in child protection, and review and analysis of field experiences of child protective services workers.

* NB Effective until December 12, 2026

* (b) promulgate regulations setting forth training requirements which shall specify, among other things, that all persons hired by a child protective service on or after April first, nineteen hundred eighty-six shall have satisfactorily completed a course approved by the office of children and family services within the first three months of employment, in the fundamentals of child protection, provided, however, that on or after April first, two thousand twenty-five, such course may be satisfactorily completed through distance learning methods which evince that all participants are in attendance for the duration of the course and are able to ask questions of the instructor. Each county

shall be authorized to adopt a local law, ordinance or resolution to provide for a local department of social services to fulfill the training requirement established by this paragraph through a distance learning method, excluding the annual in service training requirement. Such course shall include at least basic training in the principles and techniques of investigations, including relationships with other investigative bodies, legal issues in child protection, and methods of remediation, diagnosis, treatment and prevention. Such regulations shall also specify that all persons employed by a child protective service on or after December first, two thousand six shall satisfactorily complete six hours of annual in service training, beginning in their second year of employment. Such annual in service training shall include, but is not limited to, review of the protocols for identification and investigation of child abuse and maltreatment, any developments in legal, treatment and prevention issues in child protection, and review and analysis of field experiences of child protective services workers.

* NB Effective December 12, 2026

(c) require all persons assigned to be a supervisor by a child protective service on or after April first, nineteen hundred eighty-six, shall have satisfactorily completed, within the first three months of employment as a supervisor or within three months of the effective date of this paragraph, whichever shall occur first, a course in the fundamentals of child protection developed by the office of children and family services. Such training course shall, among other things, strengthen and expand current training procedures for child protective service supervisors; provide the skills, knowledge and standards to practice effective case planning and case management; provide comprehensive assessment tools needed in critical decision making; require participation in the existing next generation training required by child protective service caseworkers; strengthen recognition and response to safety and risk indicators; improve skills to promote consistent implementation of training and practice; provide the necessary tools and assistance to build the ability to coach and monitor child protective service caseworkers and model effective investigation practice; increase cultural competency and sensitivity; and establish an annual in service training program specifically focused on child protective service supervisors.

(d) withhold reimbursement, otherwise payable to social services districts, for the salaries of employees of child protective services who do not comply with the background review, educational, experience or training requirements of this title.

* (e) promulgate regulations setting forth training requirements for child protective services workers assigned to a multidisciplinary investigative team established pursuant to subdivision six of section four hundred twenty-three of this title, which shall include appropriate techniques for investigating reports of sexual abuse and requirements for ongoing training.

* NB Effective December 12, 2026

6. promulgate regulations which require social services districts to make local procedural manuals and service directories available to employees of a child protective service, service providers and other professionals involved in the prevention of child abuse and maltreatment.

* 7. take all reasonable and necessary actions to assure that the local departments of social services are kept apprised on a current basis of the laws, regulations and policies of the department concerning child abuse and maltreatment.

* NB Effective until December 12, 2026

* 7. take all reasonable and necessary actions to assure that the local departments of social services are kept apprised on a current basis of the laws, regulations and policies of the office of children and family services concerning child abuse and maltreatment.

* NB Effective December 12, 2026

8. monitor and supervise the performance of the local departments of social services.

§ 422. Statewide central register of child abuse and maltreatment. 1. There shall be established in the office of children and family services a statewide central register of child abuse and maltreatment reports made pursuant to this title.

2. (a) The central register shall be capable of receiving telephone calls alleging child abuse or maltreatment and of immediately identifying prior reports of child abuse or maltreatment and capable of monitoring the provision of child protective service twenty-four hours a day, seven days a week. To effectuate this purpose, but subject to the provisions of the appropriate local plan for the provision of child protective services, there shall be a single statewide telephone number that all persons, whether mandated by the law or not, may use to make telephone calls alleging child abuse or maltreatment and that all persons so authorized by this title may use for determining the existence of prior reports in order to evaluate the condition or circumstances of a child. In addition to the single statewide telephone number, there shall be a special unlisted express telephone number and a telephone facsimile number for use only by persons mandated by law to make telephone calls, or to transmit telephone facsimile information on a form provided by the commissioner of children and family services, alleging child abuse or maltreatment, and for use by all persons so authorized by this title for determining the existence of prior reports in order to evaluate the condition or circumstances of a child. When any allegations contained in such telephone calls could reasonably constitute a report of child abuse or maltreatment, after utilizing protocols that would reduce implicit bias from the decision-making process, such allegations, the caller's name pursuant to paragraph (d) of this subdivision, the caller's contact information pursuant to paragraph (d) of this subdivision and any previous reports to the central registry involving the subject of such report or children named in such report, including any previous report containing allegations of child abuse and maltreatment alleged to have occurred in other counties and districts in New York state shall be immediately transmitted orally or electronically by the office of children and family services to the appropriate local child protective service for investigation. The inability of the person calling the register to identify the alleged perpetrator shall, in no circumstance, constitute the sole cause for the register to reject such allegation or fail to transmit such allegation for investigation. If the records indicate a previous report concerning a subject of the report, the child alleged to be abused or maltreated, a sibling, other children in the household, other persons named in the

report or other pertinent information, the appropriate local child protective service shall be immediately notified of the fact. If the report involves either (i) an allegation of an abused child described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act or sexual abuse of a child or the death of a child or (ii) suspected maltreatment which alleges any physical harm when the report is made by a person required to report pursuant to section four hundred thirteen of this title within six months of any other two reports that were indicated, or may still be pending, involving the same child, sibling, or other children in the household or the subject of the report, the office of children and family services shall identify the report as such and note any prior reports when transmitting the report to the local child protective services for investigation.

(b) Any telephone call made by a person required to report cases of suspected child abuse or maltreatment pursuant to section four hundred thirteen of this chapter containing allegations, which if true would constitute child abuse or maltreatment shall constitute a report and shall be immediately transmitted orally or electronically by the department to the appropriate local child protective service for investigation.

(c) Whenever a telephone call to the statewide central register described in this section is received by the department, and the department finds that the person allegedly responsible for abuse or maltreatment of a child cannot be a subject of a report as defined in subdivision four of section four hundred twelve of this chapter, but believes that the alleged acts or circumstances against a child described in the telephone call may constitute a crime or an immediate threat to the child's health or safety, the department shall convey by the most expedient means available the information contained in such telephone call to the appropriate law enforcement agency, district attorney or other public official empowered to provide necessary aid or assistance.

(d) A caller making a report of suspected child abuse or maltreatment to the central register shall be asked for their name and contact information. The central register may not transmit a report to a local child protective service for investigation if the caller's name and

contact information are not provided, unless the central register reasonably believes the caller is a child under the age of eighteen.

(e) If a caller declines to provide their name and contact information, the central register must connect the caller with a supervisor, who shall inform the caller of the statutory provisions that protect callers' confidentiality. If the caller, including a caller reasonably believed to be a child under the age of eighteen, declines to provide their name and contact information to the supervisor, the supervisor shall inform the caller that (i) preventive and supportive services may be available to assist in addressing concerns relative to the care and well-being of a child and referrals for such services may be provided upon request; and (ii) knowingly reporting false or baseless allegations is a violation of subdivision four of section 240.50 of the penal law.

3. The central register shall include but not be limited to the following information: all the information in the written report; a record of the final disposition of the report, including services offered and services accepted; the plan for rehabilitative treatment; the names and identifying data, dates and circumstances of any person requesting or receiving information from the register; and any other information which the commissioner believes might be helpful in the furtherance of the purposes of this chapter.

4. (A) Reports made pursuant to this title as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the office or local departments shall be confidential and shall only be made available to:

(a) a physician who has before him or her a child whom he or she reasonably suspects may be abused or maltreated;

(b) a person authorized to place a child in protective custody when such person has before him or her a child whom he or she reasonably suspects may be abused or maltreated and such person requires the information in the record to determine whether to place the child in protective custody;

(c) a duly authorized agency having the responsibility for the care or supervision of a child who is reported to the central register of abuse

and maltreatment;

(d) any person who is the subject of the report or other persons named in the report;

(e) a court, upon a finding that the information in the record is necessary for the determination of an issue before the court;

(f) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(g) any appropriate state legislative committee responsible for child protective legislation;

(h) any person engaged in a bona fide research purpose provided, however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the department gives prior approval;

(i) a provider agency as defined by subdivision three of section four hundred twenty-four-a of this chapter, or a licensing agency as defined by subdivision four of section four hundred twenty-four-a of this chapter, subject to the provisions of such section;

(j) the justice center for the protection of people with special needs or a delegate investigatory entity in connection with an investigation being conducted under article eleven of this chapter;

(k) a probation service conducting an investigation pursuant to article three or seven or section six hundred fifty-three of the family court act where there is reason to suspect the child or the child's sibling may have been abused or maltreated and such child or sibling, parent, guardian or other person legally responsible for the child is a person named in an indicated report of child abuse or maltreatment and that such information is necessary for the making of a determination or recommendation to the court; or a probation service regarding a person about whom it is conducting an investigation pursuant to article three hundred ninety of the criminal procedure law, or a probation service or the department of corrections and community supervision regarding a person to whom the service or department is providing supervision pursuant to article sixty of the penal law or article eight of the correction law, where the subject of investigation or supervision has been convicted of a felony under article one hundred twenty, one hundred twenty-five or one hundred thirty-five of the penal law or any felony or

misdemeanor under article one hundred thirty, two hundred thirty-five, two hundred forty-five, two hundred sixty or two hundred sixty-three of the penal law, or has been indicted for any such felony and, as a result, has been convicted of a crime under the penal law, where the service or department requests the information upon a certification that such information is necessary to conduct its investigation, that there is reasonable cause to believe that the subject of an investigation is the subject of an indicated report and that there is reasonable cause to believe that such records are necessary to the investigation by the probation service or the department, provided, however, that only indicated reports shall be furnished pursuant to this subdivision;

(l) a criminal justice agency, which for the purposes of this subdivision shall mean a district attorney, an assistant district attorney or an investigator employed in the office of a district attorney; a sworn officer of the division of state police, of the regional state park police, of a county department of parks, of a city police department, or of a county, town or village police department or county sheriff's office or department; or an Indian police officer, when:

(i) such criminal justice agency requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that such person is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such person is the subject of a report, and that it is reasonable to believe that due to that nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution; or

(ii) such criminal justice agency requests such information stating that: such agency is conducting an investigation of a missing child; such agency has reason to suspect such child's parent, guardian or other person legally responsible for such child is or may be the subject of a report, or, such child or such child's sibling is or may be another person named in a report of child abuse or maltreatment and that any such information is or may be needed to further such investigation;

(m) the New York city department of investigation provided however, that no information identifying the subjects of the report or other

persons named in the report shall be made available to the department of investigation unless such information is essential to an investigation within the legal authority of the department of investigation and the state department of social services gives prior approval;

(n) chief executive officers of authorized agencies, directors of day care centers and directors of facilities operated or supervised by the department of education, the office of children and family services, the office of mental health or the office for people with developmental disabilities, in connection with a disciplinary investigation, action, or administrative or judicial proceeding instituted by any of such officers or directors against an employee of any such agency, center or facility who is the subject of an indicated report when the incident of abuse or maltreatment contained in the report occurred in the agency, center, facility or program, and the purpose of such proceeding is to determine whether the employee should be retained or discharged; provided, however, a person given access to information pursuant to this subparagraph shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information only if the purpose of such redisclosure is to initiate or present evidence in a disciplinary, administrative or judicial proceeding concerning the continued employment or the terms of employment of an employee of such agency, center or facility who has been named as a subject of an indicated report and, in addition, a person or agency given access to information pursuant to this subparagraph shall also be given information not otherwise provided concerning the subject of an indicated report where the commission of an act or acts by such subject has been determined in proceedings pursuant to article ten of the family court act to constitute abuse or neglect;

(o) a provider or coordinator of services to which a child protective service or social services district has referred a child or a child's family or to whom the child or the child's family have referred themselves at the request of the child protective service or social services district, where said child is reported to the register when the records, reports or other information are necessary to enable the provider or coordinator to establish and implement a plan of service for the child or the child's family, or to monitor the provision and coordination of services and the circumstances of the child and the

child's family, or to directly provide services; provided, however, that a provider of services may include appropriate health care or school district personnel, as such terms shall be defined by the department; provided however, a provider or coordinator of services given access to information concerning a child pursuant to this subparagraph (o) shall, notwithstanding any inconsistent provision of law, be authorized to redisclose such information to other persons or agencies which also provide services to the child or the child's family only if the consolidated services plan prepared and approved pursuant to section thirty-four-a of this chapter describes the agreement that has been or will be reached between the provider or coordinator of service and the local district. An agreement entered into pursuant to this subparagraph shall include the specific agencies and categories of individuals to whom redisclosure by the provider or coordinator of services is authorized. Persons or agencies given access to information pursuant to this subparagraph may exchange such information in order to facilitate the provision or coordination of services to the child or the child's family;

(p) a disinterested person making an investigation pursuant to section one hundred sixteen of the domestic relations law, provided that such disinterested person shall only make this information available to the judge before whom the adoption proceeding is pending;

(s) a child protective service of another state when such service certifies that the records and reports are necessary in order to conduct a child abuse or maltreatment investigation within its jurisdiction of the subject of the report and shall be used only for purposes of conducting such investigation and will not be redisclosed to any other person or agency;

(t) an attorney for a child, appointed pursuant to the provisions of section one thousand sixteen of the family court act, at any time such appointment is in effect, in relation to any report in which the respondent in the proceeding in which the attorney for a child has been appointed is the subject or another person named in the report, pursuant to sections one thousand thirty-nine-a and one thousand fifty-two-a of the family court act;

(u) a child care resource and referral program subject to the provisions of subdivision six of section four hundred twenty-four-a of

this title;

(v)(i) officers and employees of the state comptroller or of the city comptroller of the city of New York, or of the county officer designated by law or charter to perform the auditing function in any county not wholly contained within a city, for purposes of a duly authorized performance audit, provided that such comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the department to limit access to client-identifiable information to persons requiring such information for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of client-identifiable information contained in the conduct of the audit. Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the department gives prior written approval.

(ii) any failure to maintain the confidentiality of client-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the office of children and family services. The office of children and family services shall establish the grounds for denial of access to records contained under this section and shall recommend as necessary a plan of remediation to the audit agency. Except as provided in this section, nothing in this subparagraph shall be construed as limiting the powers of such comptroller or officer to access records which he or she is otherwise authorized to audit or obtain under any other applicable provision of law. Any person given access to information pursuant to this subparagraph who releases data or information to persons or agencies not authorized to receive such information shall be guilty of a class A misdemeanor;

(w) members of a local or regional fatality review team approved by

the office of children and family services in accordance with section four hundred twenty-two-b of this title;

(x) members of a local or regional multidisciplinary investigative team as established pursuant to subdivision six of section four hundred twenty-three of this title;

(y) members of a citizen review panel as established pursuant to section three hundred seventy-one-b of this article; provided, however, members of a citizen review panel shall not disclose to any person or government official any identifying information which the panel has been provided and shall not make public other information unless otherwise authorized by statute;

(z) an entity with appropriate legal authority in another state to license, certify or otherwise approve prospective foster parents, prospective adoptive parents, prospective relative guardians, prospective successor guardians or child care program where disclosure of information regarding such prospective foster or prospective adoptive parents or prospective relative or prospective successor guardians and other persons over the age of eighteen residing in the home of such persons or where child care is provided, as required under either title IV-E of the federal social security act or the federal child care and development block grant act (section nine thousand eight hundred fifty-eight, et seq. of title forty-two of the United States Code); and

(aa) a social services official who is investigating whether an adult is in need of protective services in accordance with the provisions of section four hundred seventy-three of this chapter, when such official has reasonable cause to believe such adult may be in need of protective services due to the conduct of an individual or individuals who had access to such adult when such adult was a child and that such reports and information are needed to further the present investigation.

(bb) an entity with appropriate legal authority in another state to license, certify or otherwise approve residential programs for foster children where disclosure of information regarding any prospective or current employee of such program is required by paragraph twenty of subdivision (a) of section six hundred seventy-one of title forty-two of the United States code.

After a child, other than a child in residential care, who is reported

to the central register of abuse or maltreatment reaches the age of eighteen years, access to a child's record under subparagraphs (a) and (b) of this paragraph shall be permitted only if a sibling or off-spring of such child is before such person and is a suspected victim of child abuse or maltreatment. In addition, a person or official required to make a report of suspected child abuse or maltreatment pursuant to section four hundred thirteen of this chapter shall receive, upon request, the findings of an investigation made pursuant to this title. However, no information may be released unless the person or official's identity is confirmed by the office. If the request for such information is made prior to the completion of an investigation of a report, the released information shall be limited to whether the report is "indicated", "unfounded" or "under investigation", whichever the case may be. If the request for such information is made after the completion of an investigation of a report, the released information shall be limited to whether the report is "indicated" or "unfounded", whichever the case may be. A person given access to the names or other information identifying the subjects of the report, or other persons named in the report, except the subject of the report or other persons named in the report, shall not divulge or make public such identifying information unless he or she is a district attorney or other law enforcement official and the purpose is to initiate court action or the disclosure is necessary in connection with the investigation or prosecution of the subject of the report for a crime alleged to have been committed by the subject against another person named in the report. Nothing in this section shall be construed to permit any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected child abuse or maltreatment to the statewide central register or the agency, institution, organization, program or other entity where such persons are employed or the agency, institution, organization or program with which they are associated without such persons' written permission except to persons, officials, and agencies enumerated in subparagraphs (e), (f), (h), (j), (l), (m) and (v) of this paragraph.

To the extent that persons or agencies are given access to information pursuant to subparagraphs (a), (b), (c), (j), (k), (l), (m), (o) and (q)

of this paragraph, such persons or agencies may give and receive such information to each other in order to facilitate an investigation conducted by such persons or agencies.

(B) Notwithstanding any inconsistent provision of law to the contrary, a city or county social services commissioner may withhold, in whole or in part, the release of any information which he or she is authorized to make available to persons or agencies identified in subparagraphs (a), (k), (l), (m), (n), (o), (p) and (q) of paragraph (A) of this subdivision if such commissioner determines that such information is not related to the purposes for which such information is requested or when such disclosure will be detrimental to the child named in the report.

(C) A city or county social services commissioner who denies access by persons or agencies identified in subparagraphs (a), (k), (l), (m), (n), (o), (p) and (q) of paragraph (A) of this subdivision to records, reports or other information or parts thereof maintained by such commissioner in accordance with this title shall, within ten days from the date of receipt of the request fully explain in writing to the person requesting the records, reports or other information the reasons for the denial.

(D) A person or agency identified in subparagraphs (a), (k), (l), (m), (n), (o), (p) and (q) of paragraph (A) of this subdivision who is denied access to records, reports or other information or parts thereof maintained by a local department pursuant to this title may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules.

5. (a) Unless an investigation of a report conducted pursuant to this title that is commenced on or before December thirty-first, two thousand twenty-one determines that there is some credible evidence of the alleged abuse or maltreatment or unless an investigation of a report conducted pursuant to this title that is commenced on or after January first, two thousand twenty-two determines that there is a fair preponderance of the evidence that the alleged abuse or maltreatment occurred, all information identifying the subjects of the report and other persons named in the report shall be legally sealed forthwith by the central register and any local child protective services which investigated the report. Such unfounded reports may only be unsealed and

made available:

(i) to the office of children and family services for the purpose of supervising a social services district;

(ii) to the office of children and family services and local or regional fatality review team members for the purpose of preparing a fatality report pursuant to section twenty or four hundred twenty-two-b of this chapter;

(iii) to a local child protective service, the office of children and family services, or all members of a local or regional multidisciplinary investigative team or the justice center for the protection of people with special needs when investigating a subsequent report of suspected abuse, neglect or maltreatment involving a subject of the unfounded report, a child named in the unfounded report, or a child's sibling named in the unfounded report pursuant to this article or article eleven of this chapter;

(iv) to the subject of the report; and

(v) to a district attorney, an assistant district attorney, an investigator employed in the office of a district attorney, or to a sworn officer of the division of state police, of a city, county, town or village police department or of a county sheriff's office when such official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision four of section 240.50 of the penal law.

(b) Persons given access to unfounded reports pursuant to subparagraph (v) of paragraph (a) of this subdivision shall not redisclose such reports except as necessary to conduct such appropriate investigation or prosecution and shall request of the court that any copies of such reports produced in any court proceeding be redacted to remove the names of the subjects and other persons named in the reports or that the court issue an order protecting the names of the subjects and other persons named in the reports from public disclosure. The local child protective service or state agency shall not indicate the subsequent report solely based upon the existence of the prior unfounded report or reports. Notwithstanding section four hundred fifteen of this title, section one thousand forty-six of the family court act, or, except as set forth herein, any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or

action; provided, however, an unfounded report may be introduced into evidence: (i) by the subject of the report where such subject is a respondent in a proceeding under article ten of the family court act or is a plaintiff or petitioner in a civil action or proceeding alleging the false reporting of child abuse or maltreatment; or (ii) in a criminal court for the purpose of prosecuting a violation of subdivision four of section 240.50 of the penal law. Legally sealed unfounded reports shall be expunged ten years after the receipt of the report.

(c) Notwithstanding any other provision of law, the office of children and family services may, in its discretion, grant a request to expunge an unfounded report where: (i) the source of the report was convicted of a violation of subdivision three of section 240.55 of the penal law in regard to such report; or (ii) the subject of the report presents clear and convincing evidence that affirmatively refutes the allegation of abuse or maltreatment; provided however, that the absence of a fair preponderance of the evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report. Nothing in this paragraph shall require the office of children and family services to hold an administrative hearing in deciding whether to expunge a report. Such office shall make its determination upon reviewing the written evidence submitted by the subject of the report and any records or information obtained from the state or local agency which investigated the allegations of abuse or maltreatment.

5-a. Upon notification from a local social services district, that a report is part of the family assessment and services track pursuant to subparagraph (i) of paragraph (c) of subdivision four of section four hundred twenty-seven-a of this title, the central register shall forthwith identify the report as an assessment track case and legally seal such report. Access to reports assigned to, and records created under the family assessment and services track and information concerning such reports and records is governed by paragraph (d) of subdivision five of section four hundred twenty-seven-a of this title.

6. In all other cases, the record of the report to the statewide central register shall be expunged ten years after the eighteenth birthday of the youngest child named in the report. In the case of a

child in residential care the record of the report to the statewide central register shall be expunged ten years after the reported child's eighteenth birthday. In any case and at any time, the commissioner of the office of children and family services may amend any record upon good cause shown and notice to the subjects of the report and other persons named in the report. Provided however, any report indicated for maltreatment based solely on the purchase, possession or consumption of cannabis, without a showing that the child's physical, mental or emotional condition was impaired or was in imminent danger of becoming impaired in accordance with the definition of child maltreatment as provided for in section four hundred twelve of this title is established by a fair preponderance of the evidence shall immediately be sealed upon a request pursuant to subdivision eight of this section or section four hundred twenty-four-a of this title.

7. At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the central register; provided, however, that the office of children and family services shall not release information identifying a person who made a report pursuant to section four hundred fourteen of this title except with that person's permission or pursuant to subdivision (b) of section one thousand thirty-eight of the family court act or pursuant to section four hundred twenty-four-a of this title; and that the commissioner is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation or the agency, institution, organization, program or other entity where such person is employed or with which such person is associated, which the commissioner reasonably finds will be detrimental to the safety or interests of such person.

8. (a) (i) At any time subsequent to the completion of the investigation but in no event later than ninety days after the subject of the report is notified that the report is indicated the subject may request the commissioner to amend the record of the report. If the commissioner does not amend the report in accordance with such request within ninety days of receiving the request, the subject shall have the right to a fair hearing, held in accordance with paragraph (b) of this

subdivision, to determine whether the record of the report in the central register should be amended on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title.

(ii) Upon receipt of a request to amend the record of a child abuse and maltreatment report the office of children and family services shall immediately send a written request to the child protective service which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service pertaining to such indicated report. Where a proceeding pursuant to article ten of the family court act based on the same allegations that were indicated is pending, the request to amend shall be stayed until the disposition of such family court proceeding. The service shall as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on such indicated report to the office of children and family services, including a copy of any petition or court order based on the allegations that were indicated. Unless such request to amend has been stayed, the office of children and family services shall as expeditiously as possible but within no more than fifteen working days of receiving such materials from the child protective service or state agency, review all such materials in its possession concerning the indicated report and determine, after affording such service a reasonable opportunity to present its views, whether there is a fair preponderance of the evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the indicated report and whether, based on guidelines developed by the office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, such act or acts could be relevant and reasonably related to employment of the subject of the report by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject of the report being allowed to have regular and substantial contact with children who are cared for by a provider agency, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject of the report to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

(iii) If it is determined at the review held pursuant to this paragraph that there is not a fair preponderance of the evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the office of children and family services shall amend the record to indicate that the report is "unfounded" and notify the subject forthwith.

(iv) If it is determined at the review held pursuant to this paragraph that there is a fair preponderance of the evidence in the record to find that the subject committed such act or acts but that such act or acts could not be relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or disapproval of an application which could be submitted by the subject to a licensing agency, the office of children and family services shall be precluded from informing a provider or licensing agency which makes an inquiry to such office pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated report of child abuse or maltreatment. The office of children and family services shall notify forthwith the subject of the report of such determinations and that a fair hearing has been scheduled pursuant to paragraph (b) of this subdivision. The sole issue at such hearing shall be whether the subject has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

(v) If it is determined at the review held pursuant to this paragraph that there is a fair preponderance of the evidence in the record to prove that the subject committed an act or acts of child abuse or maltreatment and that such act or acts could be relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children cared for by a provider agency or the approval or disapproval of an application which could be submitted by the subject to a licensing agency, the office of children and family services shall notify forthwith the subject of the report of such determinations and that a fair hearing has been scheduled pursuant to paragraph (b) of this

subdivision.

(b) (i) If the department, within ninety days of receiving a request from the subject that the record of a report be amended, does not amend the record in accordance with such request, the department shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service or the state agency which investigated the report.

(ii) The burden of proof in such a hearing shall be on the child protective service which investigated the report. In such a hearing, where a family court proceeding pursuant to article ten of the family court act has occurred and where the petition for such proceeding alleges that a respondent in that proceeding committed abuse or neglect against the subject child in regard to an allegation contained in a report indicated pursuant to this section: (A) where the court finds that such respondent did commit abuse or neglect there shall be an irrebuttable presumption in a fair hearing held pursuant to this subdivision that said allegation is substantiated by a fair preponderance of the evidence as to that respondent on that allegation; and (B) where such child protective service withdraws such petition with prejudice, where the family court dismisses such petition, or where the family court finds on the merits in favor of the respondent, there shall be an irrebuttable presumption in a fair hearing held pursuant to this subdivision that said allegation as to that respondent has not been proven by a fair preponderance of the evidence.

(c) (i) If it is determined at the fair hearing that there is not a fair preponderance of the evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the office of children and family services shall amend the record to reflect that such a finding was made at the administrative hearing, order any child protective service which investigated the report to similarly amend its records of the report, and shall notify the subject forthwith of the determination.

(ii) Upon a determination made at a fair hearing scheduled pursuant to the provisions of subparagraph (v) of paragraph (a) of this subdivision that the subject has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving

rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the office of children and family services pursuant to subdivision five of section four hundred twenty-four-a of this title, whether such act or acts are relevant and reasonably related to employment of the subject by a provider agency, as defined by subdivision three of section four hundred twenty-four-a of this title, or relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency, as defined by subdivision four of section four hundred twenty-four-a of this title.

Upon a determination made at a fair hearing that the act or acts of abuse or maltreatment are relevant and reasonably related to employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency, the office of children and family services shall notify the subject forthwith. The office of children and family services shall inform a provider or licensing agency which makes an inquiry to such office pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated child abuse or maltreatment report.

The failure to determine at the fair hearing that the act or acts of abuse and maltreatment are relevant and reasonably related to the employment of the subject by a provider agency or to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency or the approval or denial of an application submitted by the subject to a licensing agency shall preclude the office of children and family services from informing a provider or licensing agency which makes an inquiry to such office pursuant to the provisions of section four hundred twenty-four-a of this title concerning the subject that the person about whom the inquiry is made is the subject of an indicated child abuse or maltreatment report.

(d) The commissioner or his or her designated agent is hereby authorized and empowered to make any appropriate order respecting the amendment of a record to make it accurate or consistent with the requirements of this title.

(e) Should the office of children and family services grant the request of the subject of the report pursuant to this subdivision either through an administrative review or fair hearing to amend an indicated report to an unfounded report, such report shall be legally sealed and shall be released and expunged in accordance with the standards set forth in subdivision five of this section.

9. Written notice of any expungement or amendment of any record, made pursuant to the provisions of this title, shall be served forthwith upon each subject of such record, other persons named in the report, the commissioner, and, as appropriate, the applicable local child protective service, the justice center for the protection of people with special needs, department of education, office of mental health, office for people with developmental disabilities, the local social services commissioner or school district placing the child, any attorney for the child appointed to represent the child whose appointment has been continued by a family court judge during the term of a child's placement, and the director or operator of a residential care facility or program. The local child protective service or the state agency which investigated the report, upon receipt of such notice, shall take the appropriate similar action in regard to its child abuse and maltreatment register and records and inform, for the same purpose, any other agency which received such record.

12. Any person who willfully permits and any person who encourages the release of any data and information contained in the central register to persons or agencies not permitted by this title shall be guilty of a class A misdemeanor.

13. There shall be a single statewide telephone number for use by all persons seeking general information about child abuse, maltreatment or welfare other than for the purpose of making a report of child abuse or maltreatment.

14. The office shall refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision four of section 240.50 of the penal law to the appropriate law enforcement agency or district attorney.

§ 422-a. Child abuse and neglect investigations; disclosure. 1.

Notwithstanding any inconsistent provision of law to the contrary, the commissioner or a city or county social services commissioner may disclose information regarding the abuse or maltreatment of a child as set forth in this section, and the investigation thereof and any services related thereto if he or she determines that such disclosure shall not be contrary to the best interests of the child, the child's siblings or other children in the household and any one of the following factors are present:

(a) the subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained in the statewide central register; or

(b) the investigation of the abuse or maltreatment of the child by the local child protective service or the provision of services by such service has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a district attorney, any other state or local investigative agency or official or by judge of the unified court system; or

(c) there has been a prior knowing, voluntary, public disclosure by an individual concerning a report of child abuse or maltreatment in which such individual is named as the subject of the report as defined by subdivision four of section four hundred twelve of this title; or

(d) the child named in the report has died or the report involves the near fatality of a child. For the purposes of this section, "near fatality" means an act that results in the child being placed, as certified by a physician, in serious or critical condition.

2. For the purposes of this section, the following information may be disclosed:

(a) the name of the abused or maltreated child;

(b) the determination by the local child protective service or the state agency which investigated the report and the findings of the applicable investigating agency upon which such determination was based;

(c) identification of child protective or other services provided or actions, if any, taken regarding the child named in the report and his or her family as a result of any such report or reports;

(d) whether any report of abuse or maltreatment regarding such child has been "indicated" as maintained by the statewide central register;

(e) any actions taken by the local child protective service and the local social services district in response to reports of abuse or maltreatment of the child to the statewide central register including but not limited to actions taken after each and every report of abuse or maltreatment of such child and the dates of such reports;

(f) whether the child or the child's family has received care or services from the local social services district prior to each and every report of abuse or maltreatment of such child;

(g) any extraordinary or pertinent information concerning the circumstances of the abuse or maltreatment of the child and the investigation thereof, where the commissioner or the local commissioner determines such disclosure is consistent with the public interest.

3. Information may be disclosed pursuant to this section as follows:

(a) information released prior to the completion of the investigation of a report shall be limited to a statement that a report is "under investigation";

(b) when there has been a prior disclosure pursuant to paragraph (a) of this subdivision, information released in a case in which the report has been unfounded shall be limited to the statement that "the investigation has been completed, and the report has been unfounded";

(c) if the report has been "indicated" then information may be released pursuant to subdivision two of this section.

4. Any disclosure of information pursuant to this section shall be consistent with the provisions of subdivision two of this section. Such disclosure shall not identify or provide an identifying description of the source of the report, and shall not identify the name of the abused or maltreated child's siblings, the parent or other person legally

responsible for the child or any other members of the child's household, other than the subject of the report.

5. In determining pursuant to subdivision one of this section whether disclosure will be contrary to the best interests of the child, the child's siblings or other children in the household, the commissioner or a city or county social services commissioner shall consider the interest in privacy of the child and the child's family and the effects which disclosure may have on efforts to reunite and provide services to the family.

6. Whenever a disclosure of information is made pursuant to this section, the city or county social services commissioner shall make a written statement prior to disclosing such information to the chief county executive officer where the incident occurred setting forth the paragraph in subdivision one of this section upon which he or she is basing such disclosure.

7. Except as it applies directly to the cause of the abuse or maltreatment of the child, nothing in this section shall be deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such child or the child's family. Prior to the release or disclosure of any psychological, psychiatric or therapeutic reports, evaluations or like materials or information pursuant to this subdivision, the city or county social services commissioner shall consult with the local mental hygiene director.

§ 422-b. Local and regional fatality review teams. 1. A fatality review team may be established at a local or regional level, with the approval of the office of children and family services, for the purpose of investigating the death of any child whose care and custody or custody and guardianship has been transferred to an authorized agency, other than a vulnerable child as defined in article eleven of this chapter, any child for whom child protective services has an open case,

any child for whom the local department of social services has an open preventive services case, and in the case of a report made to the statewide central register of child abuse and maltreatment involving the death of a child. A fatality review team may also investigate any unexplained or unexpected death of any child under the age of eighteen.

2. A local or regional fatality review team may exercise the same authority as the office of children and family services with regard to the preparation of a fatality report as set forth in paragraphs (b) and (c) of subdivision five of section twenty of this chapter. Notwithstanding any other provision of law to the contrary and to the extent consistent with federal law, such local or regional fatality review team shall have access to those client-identifiable records necessary for the preparation of the report, as authorized in accordance with paragraph (d) of subdivision five of section twenty of this chapter. A fatality report prepared by a local or regional fatality review team and approved by the office of children and family services satisfies the obligation to prepare a fatality report as set forth in subdivision five of section twenty of this chapter. Such report shall be subject to the same redisclosure provisions applicable to fatality reports prepared by the office of children and family services.

3. For the purposes of this section, a local or regional fatality review team must include, but need not be limited to, representatives from the child protective service, office of children and family services, county department of health, or, should the locality not have a county department of health, the local health commissioner or his or her designee or the local public health director or his or her designee, office of the medical examiner, or, should the locality not have a medical examiner, office of the coroner, office of the district attorney, office of the county attorney, local and state law enforcement, emergency medical services and a pediatrician or comparable medical professional, preferably with expertise in the area of child abuse and maltreatment or forensic pediatrics. A local or regional fatality review team may also include representatives from local departments of social services, mental health agencies, domestic violence agencies, substance abuse programs, hospitals, local schools,

and family court.

4. A local or regional fatality review team established pursuant to this section shall have access to all records, except those protected by statutory privilege, within twenty-one days of receipt of a request.

5. Members of a local or regional fatality review team, persons attending a meeting of a local or regional fatality review team, and persons who present information to a local or regional fatality review team shall have immunity from civil and criminal liability for all reasonable and good faith actions taken pursuant to this section, and shall not be questioned in any civil or criminal proceeding regarding any opinions formed as a result of a meeting of a local or regional fatality review team. Nothing in this section shall be construed to prevent a person from testifying as to information obtained independently of a local or regional fatality review team or which is public information.

6. All meetings conducted and all reports and records made and maintained, and books and papers obtained, by a local or regional fatality review team shall be confidential and not open to the general public except by court order and except for an annual report or a fatality report, if the fatality review team chooses to complete such an annual report or fatality report. The release of any fatality report prepared by a local or regional fatality review team shall be governed by the provisions of subdivision five of section twenty of this chapter. Any such annual report or fatality report shall not contain any individually identifiable information and shall be provided to the office of children and family services upon completion. The office of children and family services shall forward copies of any such report to all other local or regional fatality review teams established pursuant to this section, to all citizen review panels established pursuant to section three hundred seventy-one-b of this chapter, and to the governor, the temporary president of the senate and the speaker of the assembly.

§ 422-c. Establishment of the child abuse medical provider program (CHAMP). 1. The child abuse medical provider program shall be established by the office of children and family services and operated by the child abuse referral and evaluation (CARE) program of the SUNY Upstate medical university, provided other similarly qualified organizations may also operate a CHAMP program, to improve access to quality medical care for suspected child abuse victims by providing training in the assessment and diagnostic skills for medical providers to identify and treat child abuse victims and by developing and providing continuing education and mentoring to certain persons mandated to report suspected child abuse or maltreatment pursuant to section four hundred thirteen of this title. CHAMP shall be a network of expert child abuse medical professionals, that provides a comprehensive source of child abuse information that offers resources and educational tools created to assist and educate mandated reporters in the identification of child abuse and maltreatment.

2. The CHAMP program shall provide information, training and mentoring on child abuse or neglect to certain persons mandated to report suspected child abuse or maltreatment pursuant to section four hundred thirteen of this title, and may include, but not be limited to:

- (a) distant learning;
- (b) a web based curriculum;
- (c) video conferencing;
- (d) workshops;
- (e) mailings;
- (f) self-study courses;
- (g) continued learning through case conferences and peer review; and
- (h) direct training of medical providers.

§ 423. Child protective service responsibilities and organization; purchase of service and reimbursement of cost; local plan. 1. (a) Every local department of social services shall establish a "child protective service" within such department. The child protective service shall perform those functions assigned by this title to it and only such others that would further the purposes of this title. Local social

services departments shall distribute the laws, regulations and policies of the department pursuant to section four hundred twenty-one of this article to any society for the prevention of cruelty to children which has entered into a currently valid contract with a local department of social services.

(b) Every local department of social services shall provide to the child protective service information available to the local department which is relevant to the investigation of a report of child abuse or maltreatment or to the provision of protective services, where the confidentiality of such information is not expressly protected by law.

(c) The child protective service shall have a sufficient staff of sufficient qualifications to fulfill the purposes of this title and be organized in such a way as to maximize the continuity of responsibility, care and service of individual workers toward individual children and families. A social services district shall have flexibility in assigning staff to the child protective service provided that each staff assigned to such service has the staff qualifications and has received the training required by the department regulations promulgated pursuant to subdivisions four and five of section four hundred twenty-one of this title.

(d) Consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, every child protective service shall establish a procedure to review and evaluate the backgrounds of and information supplied by all applicants for employment. Such procedures shall include but not be limited to the following requirements: that the applicant set forth his or her employment history, provide personal and employment references and relevant experiential and educational information, and sign a sworn statement indicating whether the applicant, to the best of his or her knowledge, has ever been convicted of a crime in this state or any other jurisdiction.

(e) For purposes of this title, a child protective service shall include an Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter to provide child protective services to Indians residing upon the tribe's reservation in the state. Notwithstanding any other provision of law, for the purposes of this title, a social services district or a local

department of social services shall include an Indian tribe that has entered into an agreement with the department pursuant to section thirty-nine of this chapter to provide child protective services. Such Indian tribe shall only be considered a child protective service while such an agreement is in effect.

2. Any other provision of law notwithstanding, but consistent with subdivision (1) of this section, the child protective service, based upon the local plan of services as provided in subdivision (3) of this section, may purchase and utilize the services of any appropriate public or voluntary agency including a society for the prevention of cruelty to children. When services are purchased by the local department pursuant to this section and title, they shall be reimbursed by the state to the locality in the same manner and to the same extent as if the services were provided directly by the local department.

3. (a) Each social services district shall prepare and submit to the commissioner, after consultation with local law enforcement agencies, the family court and appropriate public or voluntary agencies including societies for the prevention of cruelty to children and after a public hearing, a district-wide plan, as prescribed by the commissioner, for the provision of child protective services which shall be a component of the district's multi-year consolidated services plan. This plan shall describe the district's implementation of this title including the organization, staffing, mode of operations and financing of the child protective service as well as the provisions made for purchase of service and inter-agency relations. Commencing the year following preparation of a multi-year consolidated services plan, each local district shall prepare annual implementation reports including information related to its child protective services plan. The social services district shall submit the child protective services plan to the department as a component of its multi-year consolidated services plan and subsequent thereto as a component of its annual implementation reports and the department shall review and approve or disapprove the proposed plan and reports in accordance with the procedures set forth in section thirty-four-a of this chapter.

4. As used in this section, "service" or "services" shall include the coordinating and monitoring of the activities of appropriate public or voluntary agencies utilized in the local plan.

5. In accordance with the provisions of subdivisions one and two of this section, a local department of social services may submit to the department a plan for a special program for the purpose of (a) ensuring the delivery of services to children and their families by arranging for the purchase and utilization of the service of any appropriate public or voluntary agency to provide rehabilitative services to at least the majority of children and families assisted by the child protective service; and (b) strengthening the monitoring role of the child protective service.

Such program shall also include provisions for the training of employees of public and private agencies assigned functions of the child protective service, in the duties and responsibilities of the child protective service and in the provision of services to children and families, pursuant to this title. The department shall approve such a plan in not more than six social services districts upon satisfactory demonstration that a local department of social services will effectively discharge all responsibilities required by this title. Any such plan must be submitted to the department as part of the multi-year services plan required pursuant to section thirty-four-a of this chapter and, if approved, shall be operative for a period not to exceed three years. The department shall contract with an individual, partnership, corporation, institution or other organization for the performance of a comprehensive evaluation of the effectiveness of the implementation of such plans. A report of such evaluations shall be submitted by the department to the governor and the legislature by January first, nineteen hundred ninety. Nothing in this subdivision shall be deemed to relieve a child protective service from any responsibilities assigned to it by this title.

6. A social services district may establish a multidisciplinary investigative team or teams and may establish or work as part of a child advocacy center established pursuant to section four hundred

twenty-three-a of this title, at a local or regional level, for the purpose of investigating reports of suspected child abuse or maltreatment. The social services district shall have discretion with regard to the category or categories of suspected child abuse or maltreatment such team or teams may investigate, provided, however, the social services district shall place particular emphasis on cases involving the abuse of a child as described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act, sexual abuse of a child or the death of a child. Members of multidisciplinary teams shall include but not be limited to representatives from the following agencies: child protective services, law enforcement, district attorney's office, physician or medical provider trained in forensic pediatrics, mental health professionals, victim advocacy personnel and, if one exists, a child advocacy center. Members of the multidisciplinary team primarily responsible for the investigation of child abuse reports, including child protective services, law enforcement and district attorney's office, shall participate in joint interviews and conduct investigative functions consistent with the mission of the particular agency member involved. It shall not be required that members of a multidisciplinary team not responsible for the investigation of reports participate in every investigation. Such other members shall provide victim advocacy, emotional support, and access to medical and mental health care, where applicable. All members, consistent with their respective agency missions, shall facilitate efficient delivery of services to victims and appropriate disposition of cases through the criminal justice system and/or the family court system in a collaborative manner, however, non-investigative team members shall note their specific role in the team for reports covered under this title. Notwithstanding any other provision of law to the contrary, members of a multidisciplinary investigative team or a child advocacy center may share with other team members client-identifiable information concerning the child or the child's family to facilitate the investigation of suspected child abuse or maltreatment. Nothing in this subdivision shall preclude the creation of multidisciplinary teams or child advocacy centers which include more than one social services district. Each team shall develop a written protocol for investigation of child abuse and maltreatment cases and for

interviewing child abuse and maltreatment victims. The social services district is encouraged to train each team member in risk assessment, indicators of child abuse and maltreatment, and appropriate interview techniques.

§ 423-a. Child advocacy centers established. 1. The office of children and family services shall to the greatest extent practicable facilitate the establishment of child advocacy centers in every region of the state so that child victims of sexual abuse or serious physical abuse have reasonable access to such a center and so that their cases are handled in an expert and timely manner, by a coordinated and cooperative effort that minimizes trauma to the children and their non-offending family members. Child advocacy centers shall be established by either a governmental entity or a private, nonprofit incorporated agency and shall meet the state office of children and family services program standards for child advocacy centers approval and strive to co-locate members of the local multi-disciplinary team at the child advocacy center.

2. Child advocacy centers may assist in the investigation of child abuse and maltreatment cases and shall provide at a minimum for the following:

(a) a comfortable, private setting that is both physically and psychologically safe for children;

(b) sound program, fiscal and administrative practices;

(c) policies, practices and procedures that are culturally competent; for the purpose of this paragraph "culturally competent" is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community;

(d) a multidisciplinary investigative team established pursuant to subdivision six of section four hundred twenty-three of this article;

(e) a written set of interagency protocols for an interdisciplinary and coordinated approach to the investigation of child abuse;

(f) forensic interviews to be conducted in a manner which is neutral and fact-finding and coordinated to avoid duplicative interviewing;

(g) specialized medical evaluation and treatment as part of the multidisciplinary investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;

(h) specialized mental health services as part of the multidisciplinary investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;

(i) victim support and advocacy as part of the multidisciplinary team investigative team response, either at the center or through coordination with and referral to other appropriate treatment providers;

(j) a routine interdisciplinary case review process for purposes of decision making, problem solving, systems coordination and information sharing concerning case status and services needed by the child and family;

(k) a comprehensive tracking system for monitoring case process and tracking case outcomes for team members; and

(l) a process for evaluating its effectiveness and its operation.

3. Child advocacy centers may also provide space for medical evaluation, therapeutic intervention, support services for child abuse victims and their families, community education about child abuse, and any other services the center deems critical to the provision of service to child victims and their families and the multidisciplinary investigation of abuse allegations.

4. Any child advocacy center established prior to the effective date of this section shall, within six months of the effective date of this section, revise its policies and practices to comply with subdivision two of this section. No organization shall refer to itself as a child advocacy center unless it complies with this section.

5. (a) The files, reports, records, communications, working papers or videotaped interviews used or developed in providing services under this section are confidential. Provided, however, that disclosure may be made to members of a multidisciplinary investigative team who are engaged in the investigation of a particular case and who need access to the

information in order to perform their duties for purposes consistent with this section and to other employees of a child advocacy center who are involved in tracking cases for the child advocacy center. Disclosure shall also be made for the purpose of investigation, prosecution and/or adjudication in any relevant court proceeding or, upon written release by any non-offending parent, for the purpose of counseling for the child victim.

(b) Any public or private department, agency or organization may share with a child advocacy center information that is made confidential by law when it is needed to provide or secure services pursuant to this section. Confidential information shared with or provided to a center remains the property of the providing organization.

(c) The office of children and family services shall have access to all records created or maintained by a child advocacy center in order to carry out the responsibilities of that office pursuant to this title.

§ 424. Duties of the child protective service concerning reports of abuse or maltreatment. Each child protective service shall:

1. receive on a twenty-four hour, seven day a week basis all reports of suspected child abuse or maltreatment in accordance with this title, the local plan for the provision of child protective services and the regulations of the commissioner;

2. maintain and keep up-to-date a local child abuse and maltreatment register of all cases reported under this title together with any additional information obtained and a record of the final disposition of the report, including services offered and accepted;

3. upon the receipt of each written report made pursuant to this title, transmit, forthwith, a copy thereof to the state central register of child abuse and maltreatment. In addition, not later than seven days after receipt of the initial report, the child protective service shall send a preliminary written report of the initial investigation, including evaluation and actions taken or contemplated, to the state central register. Follow-up reports shall be made at regular intervals

thereafter in a manner and form prescribed by the commissioner by regulation to the end that the state central register is kept fully informed and up-to-date concerning the handling of reports;

4. give telephone notice and forward immediately a copy of reports made pursuant to this title which involve the death of a child to the appropriate district attorney. In addition, telephone notice shall be given and a copy of any or all reports made pursuant to this title shall be forwarded immediately by the child protective service to the appropriate district attorney if a prior request in writing for such notice and copies has been made to the service by the district attorney. Such request shall specify the kinds of allegations concerning which the district attorney requires such notice and copies and shall provide a copy of the relevant provisions of law;

5. forward an additional copy of each report to the appropriate duly incorporated society for the prevention of cruelty to children or other duly authorized child protective agency if a prior request for such copies has been made to the service in writing by the society or agency;

5-a. give telephone notice and forward immediately a copy of reports made pursuant to this title which involve suspected physical injury as described in paragraph (i) of subdivision (e) of section ten hundred twelve of the family court act or sexual abuse of a child or the death of a child to the appropriate local law enforcement. Investigations shall be conducted by an approved multidisciplinary investigative team, established pursuant to subdivision six of section four hundred twenty-three of this title provided that in counties without a multidisciplinary investigative team investigations shall be conducted jointly by local child protective services and local law enforcement. Provided however, that co-reporting in these instances shall not be required when the local social services district has an approved protocol on joint investigations of child abuse and maltreatment between the local district and law enforcement. Such protocol shall be submitted to the office of children and family services for approval and the office shall approve or disapprove of such protocols within thirty days of submission. Nothing in this subdivision shall prohibit local child

protective services from consulting with local law enforcement on any child abuse or maltreatment report.

5-b. shall make an assessment in a timely manner of each report made pursuant to this title which involves suspected maltreatment which alleges any physical harm when the report is made by a person required to report pursuant to section four hundred thirteen of this title within six months of any other two reports that were indicated or may still be pending involving the same child, sibling, or other children in the household or the subject of the report to determine whether it is necessary to give notice of the report to the appropriate local law enforcement entity. If the local child protective services determines that local law enforcement shall be given notice, they shall give telephone notice and immediately forward a copy of the reports to local law enforcement. If the report is shared with local law enforcement, investigations shall be conducted by an approved multidisciplinary investigative team, established pursuant to subdivision six of section four hundred twenty-three of this title provided that in counties without a multidisciplinary investigative team investigations shall be conducted jointly by local child protective services and local law enforcement. Provided however, that co-reporting in these instances shall not be required when the local social services district has an approved protocol on joint investigations of child abuse and maltreatment between the local district and law enforcement. Such protocol shall be submitted to the office of children and family services for approval and the office shall approve or disapprove of such protocols within thirty days of submission. Nothing in this subdivision shall modify the requirements of this section. Nothing in this subdivision shall prohibit local child protective services from consulting with local law enforcement on any child abuse or maltreatment report and nothing in this subdivision shall prohibit local child protective services and local law enforcement or a multidisciplinary team from agreeing to co-investigate any child abuse or maltreatment report.

6. (a) upon receipt of such report, commence or cause the appropriate society for the prevention of cruelty to children to commence, within

twenty-four hours, an appropriate investigation which shall include an evaluation of the environment of the child named in the report and any other children in the same home and a determination of the risk to such children if they continue to remain in the existing home environment, as well as a determination of the nature, extent and cause of any condition enumerated in such report and the name, age and condition of other children in the home, and, after seeing to the safety of the child or children, forthwith notify the subjects of the report and other persons named in the report in writing of the existence of the report and their respective rights pursuant to this title in regard to amendment;

(b) ascertain whether the child named in the report or any other child in the same home is in the care, custody or guardianship of an authorized agency. Where such authorized agency is not the social services district in which the home is located, the report shall be forwarded as soon as possible to such authorized agency and any other social services district charged with the care, custody or guardianship of the child or other children in the home. Such authorized agency and local social services district shall also be notified as to whether such report is indicated or unfounded in accordance with subdivision seven of this section. Nothing in this subdivision shall require such social services district to investigate or participate in the investigation of such report;

(c) subject to rules and regulations of the division of criminal justice services, a manager of the child protective services unit, or a person with law enforcement background who is specifically designated by the commissioner of the local social services district for this purpose, shall have access to conviction records maintained by state law enforcement agencies pertaining to persons of or over the age of eighteen years who (1) are currently residing in the residence of any child who is alleged to be or suspected of being abused, maltreated, or neglected or (2) are named in any report of suspected or alleged child abuse, maltreatment, or neglect; provided that nothing in this subdivision shall be construed to contradict or modify section one thousand forty-six of the family court act. Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to the child protective services unit of a local social

services district pursuant to this subdivision, shall be kept confidential and shall not be made available for public inspection. Child protective services units shall not indicate a report solely based upon the existence of a conviction record;

6-a. upon receipt of such report and commencement of the appropriate investigation, where the child protective service is not able to locate the child or has been denied access to the home or denied access to the child named in the report or to any children in the household, and where the child protective investigator has cause to believe a child or children's life or health may be in danger immediately advise the parent or person legally responsible for the child's care or with whom the child is residing that, when denied sufficient access to the child or other children in the home, the child protective investigator may contact the family court to seek an immediate court order to gain access to the home and/or the child named in the report or any children in the household without further notice and that while such request is being made to such court, law enforcement may be contacted and if contacted shall respond and shall remain where the child or children are or are believed to be present;

6-b. should the parent or persons legally responsible for the child's care or with whom the child is residing continue to deny access to the child, children and/or home sufficient to allow the child protective investigator to determine their safety and if a child protective investigator seeks an immediate family court order to gain access to the child, children and/or home, law enforcement may be contacted and if contacted shall respond and shall remain where the child or children are or are believed to be present while the request is being made;

7. determine, within sixty days, whether the report is "indicated" or "unfounded";

* 7-a. where a determination is not made within sixty days, document in the record the reason or reasons the determination was not made within sixty days, and determine within thirty days thereafter whether the report is "indicated" or "unfounded";

* NB Expired July 1, 1992

8. refer suspected cases of falsely reporting child abuse and maltreatment in violation of subdivision four of section 240.50 of the penal law to the appropriate law enforcement agency or district attorney;

9. take a child into protective custody to protect him from further abuse or maltreatment when appropriate and in accordance with the provisions of the family court act;

10. based on the investigation and evaluation conducted pursuant to this title, offer to the family of any child believed to be suffering from abuse or maltreatment such services for its acceptance or refusal, as appear appropriate for either the child or the family or both; provided, however, that prior to offering such services to a family, explain that it has no legal authority to compel such family to receive said services, but may inform the family of the obligations and authority of the child protective service to petition the family court for a determination that a child is in need of care and protection;

11. in those cases in which an appropriate offer of service is refused and the child protective service determines or if the service for any other appropriate reason determines that the best interests of the child require family court or criminal court action, initiate the appropriate family court proceeding or make a referral to the appropriate district attorney, or both;

12. assist the family court or criminal court during all stages of the court proceeding in accordance with the purposes of this title and the family court act;

13. coordinate, provide or arrange for and monitor, as authorized by the social services law, the family court act and by this title, rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the family court.

14. comply with provisions of sections ten hundred thirty-nine-a and

ten hundred fifty-two-a of the family court act.

The provisions of this section shall not apply to a child protective service with respect to reports involving children in homes operated or supervised by the office of children and family services, the office of mental health, or the office of people with developmental disabilities subject to the provisions of section four hundred twenty-four-b of this title.

§ 424-a. Access to information contained in the statewide central register of child abuse and maltreatment. 1. (a) (i) A licensing agency shall inquire of the department and the department shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether an applicant for a certificate, license or permit, the director of a camp subject to the provisions of article thirteen-B of the public health law, a prospective successor guardian when a clearance is conducted pursuant to paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, and any person over the age of eighteen who resides in the home of a person who has applied to become an adoptive parent or a foster parent or any person over the age of eighteen residing in the home of a prospective successor guardian when a clearance is conducted of a prospective successor guardian pursuant to this paragraph, has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(ii) A licensing agency shall inquire of the office whether an applicant for a certificate, license or permit to operate a child care program including a family day care home, group family day care home, child care center, school age child care program, or enrolled legally exempt provider or an employee, volunteer or applicant to be an employee or volunteer in such program who has potential for regular and substantial contact with children in the program, is the confirmed subject of an indicated child abuse report maintained by the statewide central register of child abuse and maltreatment. The office shall promulgate regulations related to the process by which providers and

applicants will be informed whether the applicant is authorized or unauthorized to care for children based on the outcome of such inquiry.

(iii) A licensing agency shall inquire of the office whether any person age eighteen or older who is not related in any way to all children for whom care is provided that resides on the premises of where child care is provided in a setting that is not the child's own home by an enrolled legally-exempt provider as such term is defined in subdivision one-a of section three hundred ninety-b of this chapter is the confirmed subject of an indicated child abuse report maintained by the statewide central register of child abuse and maltreatment. The office shall promulgate regulations related to the process by which providers and applicants will be informed whether the applicant is authorized or unauthorized to care for children based on the outcome of such inquiry.

(iv) A licensing agency conducting inquiries pursuant to subparagraphs (ii) and (iii) of this paragraph may inquire of the office whether any person who is to be hired as a consultant by such agency who has the potential for regular and substantial contact with individuals who are cared for by the agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. The office shall promulgate regulations related to the process by which providers and applicants will be informed whether the applicant is authorized or unauthorized to care for children based on the outcome of such inquiry.

(v) A licensing agency conducting inquiries pursuant to subparagraphs (ii) and (iii) of this paragraph may inquire of the office whether any person who has volunteered his or her services to such agency and who will have the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. The office shall promulgate regulations related to the process by which providers and applicants will be informed whether the applicant is authorized or unauthorized to care for children based on the outcome of such inquiry.

(b) (i) (A) Subject to the provisions of subdivision seven of this section, a provider agency shall inquire of the office and the office shall, subject to the provisions of paragraph (e) of this subdivision,

inform such agency and the subject of the inquiry whether any person who is actively being considered for employment and who will have the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment prior to permitting such person to have unsupervised contact with such individuals. Such agency may inquire of the office and the office shall inform such agency and the subject of the inquiry whether any person who is currently employed and who has the potential for regular and substantial contact with individuals who are cared for by such agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. A provider agency shall also inquire of the office and the office shall inform such agency and the subject of the inquiry whether any person who is employed by an individual, corporation, partnership or association which provides goods or services to such agency who has the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment prior to permitting such person to have unsupervised contact with such individuals. Inquiries made to the office pursuant to this subparagraph by a provider agency on current employees shall be made no more often than once in any six month period.

(B) Notwithstanding clause (A) of this subparagraph, where the provider agency is an authorized agency that operates a residential program for foster children that is licensed or certified by the office of children and family services such agency shall inquire of the office and the office shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether:

(I) any person who is actively being considered for employment in such program who is not already required to be cleared pursuant to clause (A) of this subparagraph is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment; and

(II) Notwithstanding any other provision of law to the contrary, prior to April first, two thousand twenty and in accordance with a schedule

developed by the office of children and family services, whether any person who is employed in a residential foster care program that has not previously had a clearance conducted pursuant to this subparagraph in connection to such employment is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(ii) A provider agency may inquire of the office and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who is to be hired as a consultant by such agency who has the potential for regular and substantial contact with individuals who are cared for by the agency is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(iii) A provider agency may inquire of the office and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether any person who has volunteered his or her services to such agency and who will have the potential for regular and substantial contact with individuals who are cared for by the agency, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(iv) The office shall promulgate regulations which effectuate the provisions of this paragraph.

(c) An authorized agency shall inquire of the department and the department shall inform such agency and the subject of the inquiry, whether any person who has applied to adopt a child is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(d) Any person who has applied to a licensing agency for a certificate, license or permit or who has applied to be an employee of a provider agency or who has applied to an authorized agency to adopt a child, or who may be hired as a consultant or used as a volunteer by a provider agency and any other person about whom an inquiry is made to the department pursuant to the provisions of this section shall be notified by such agency at the time of application or prior to the time that a person may be hired as a consultant or used as a volunteer that

the agency will or may inquire of the department whether such person is the subject of an indicated child abuse and maltreatment report. All employees of a provider agency shall be notified by their employers that an inquiry may be made to the department pursuant to this section and no such inquiry shall be made regarding any employee until such notice has been made.

(d-1) A law enforcement agency pursuant to section eight hundred thirty-seven-k of the executive law may inquire of the department and the department may inform such agency and the subject of the inquiry, whether any person who has applied for a symbol provided for in section eight hundred thirty-seven-k of the executive law or persons residing or regularly visiting said location are the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

(e) (i) Subject to the provisions of subparagraph (ii) of this paragraph, the office of children and family services shall inform the provider or licensing agency, or child care resource and referral programs pursuant to subdivision six of this section whether or not the person is the subject of an indicated child abuse and maltreatment report only if:

(A) (I) the time for the subject of the report to request an amendment of the record of the report pursuant to subdivision eight of section four hundred twenty-two has expired without any such request having been made; or

(II) such request was made within such time and a fair hearing regarding the request has been finally determined by the commissioner and the record of the report has not been amended to unfound the report or delete the person as a subject of the report; and

(B) (I) the person is the subject of an indicated report of child abuse; or

(II) the person is not the subject of an indicated report of child abuse and is the subject of a report of child maltreatment where the indication for child maltreatment occurred within less than eight years from the date of the inquiry.

(ii) If the subject of an indicated report of child abuse or maltreatment has not requested an amendment of the record of the report and an inquiry is made to the office of children and family services

pursuant to this subdivision concerning the subject of the report, such office shall, as expeditiously as possible but within no more than ten working days of receipt of the inquiry, determine whether, in fact, the person about whom an inquiry is made is the subject of an indicated report. Upon making a determination that the person about whom the inquiry is made is the subject of an indicated report of child abuse and maltreatment, the office of children and family services shall immediately send a written request to the child protective service or state agency which was responsible for investigating the allegations of abuse or maltreatment for all records, reports and other information maintained by the service or state agency on the subject. The service or state agency shall, as expeditiously as possible but within no more than twenty working days of receiving such request, forward all records, reports and other information it maintains on the indicated report to the office of children and family services, including a copy of any petition or court order based on the allegations that were indicated. Where a proceeding pursuant to article ten of the family court act is pending based on the same allegations that were indicated, the office of children and family services shall stay determination of whether there is a fair preponderance of the evidence to support the indication until the disposition of such family court proceeding. Unless such determination has been stayed, the office of children and family services shall, within fifteen working days of receiving such records, reports and other information from the child protective service or state agency, review all records, reports and other information in its possession concerning the subject and determine whether there is a fair preponderance of the evidence to find that the subject had committed the act or acts of child abuse or maltreatment giving rise to the indicated report.

(iii) If it is determined, after affording such service or state agency a reasonable opportunity to present its views, that there is not a fair preponderance of the evidence in the record to find that the subject committed such act or acts, the office of children and family services shall amend the record to indicate that the report was unfounded and notify the inquiring party that the person about whom the inquiry is made is not the subject of an indicated report.

(iv) (A) If it is determined after a review by the office of all

records, reports and information in its possession concerning the subject of the report that there is a preponderance of the evidence to find that the subject committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the office shall also determine whether such act or acts are relevant and reasonably related to issues concerning the employment of the subject by a provider agency or the subject being allowed to have regular and substantial contact with individuals cared for by a provider agency or the approval or disapproval of an application which has been submitted by the subject to a licensing agency, based on guidelines developed pursuant to subdivision five of this section. If it is determined that such act or acts are not relevant and related to such issues, the office shall be precluded from informing the provider or licensing agency which made the inquiry to the office pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report of child abuse or maltreatment.

(B) Where the subject of the report is not the subject of any indicated report of child abuse and is the subject of a report of child maltreatment where the indication for child maltreatment occurred more than eight years prior to the date of the inquiry, any such indication of child maltreatment shall be deemed to be not relevant and reasonably related to employment.

(v) If it is determined after a review by the office of children and family services of all records, reports and information in its possession concerning the subject of the report that there is a fair preponderance of the evidence to prove that the subject committed the act or acts of abuse or maltreatment giving rise to the indicated report the office of children and family services shall notify the subject of the determination of such report and of the subject's right to request a fair hearing. If the subject shall request a hearing, the office of children and family services shall schedule a fair hearing and shall provide notice of the scheduled hearing date to the subject, the statewide central register and, as appropriate, to the child protective service which investigated such report.

(vi) The burden of proof in such a hearing shall be on the child protective service which investigated the report. In such a hearing, where a family court proceeding pursuant to article ten of the family

court act has occurred and where the petition for such proceeding alleges that a respondent in that proceeding committed abuse or maltreatment against the subject child in regard to an allegation contained in a report indicated pursuant to this section: (A) where the court finds that such respondent did commit abuse or maltreatment there shall be an irrebuttable presumption in a fair hearing held pursuant to this subdivision that said allegation is substantiated by a fair preponderance of the evidence as to that respondent on that allegation; and (B) where such child protective service withdraws such petition with prejudice, where the family court dismisses such petition, or where the family court finds on the merits in favor of the respondent, there shall be an irrebuttable presumption in a fair hearing held pursuant to this subdivision that said allegation as to that respondent has not been proven by a fair preponderance of the evidence.

(vii) If it shall be determined at the fair hearing that there is no fair preponderance of the evidence in the record to find that the subject committed an act or acts of child abuse or maltreatment, the office of children and family services shall amend the record as to that respondent on that allegation to reflect that such a finding was made at the administrative hearing, order any child protective service which investigated the report as to that respondent to similarly amend its records of such report, notify the subject of the determination, and notify the inquiring party that the person about whom such inquiry was made is not the subject of an indicated report on that allegation.

(viii) Upon a determination at the fair hearing that the subject has been shown, by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the hearing officer shall determine, based on guidelines developed by the office of children and family services pursuant to subdivision five of this section, whether such act or acts are relevant and reasonably related to the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency as defined in subdivision three of this section, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency as defined in subdivision four of this section.

(ix) Upon a determination made at a fair hearing that the act or acts

of abuse or maltreatment are relevant and reasonably related to the employment of the subject by a provider agency as defined in subdivision three of this section, the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency as defined in subdivision three of this section, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency as defined in subdivision four of this section, the office of children and family services shall notify the subject and shall inform the inquiring party that the person about whom such inquiry was made is the subject of an indicated report of child abuse or maltreatment.

(x) The failure to determine at the fair hearing that the act or acts of abuse or maltreatment are relevant and reasonably related to the employment of the subject by a provider agency as defined in subdivision three of this section, the subject being allowed to have regular and substantial contact with children who are cared for by a provider agency as defined in subdivision three of this section, or relevant and reasonably related to the approval or disapproval of an application submitted by the subject to a licensing agency as defined in subdivision four of this section, shall preclude the office of children and family services from informing a provider agency as defined in subdivision three of this section or licensing agency as defined in subdivision four of this section that such person is the subject of an indicated report of child abuse or maltreatment on that allegation.

(f) The office of children and family services shall charge a fee of twenty-five dollars when it conducts a search of its records within the statewide central register for child abuse or maltreatment in accordance with this section or regulations of the office to determine whether an applicant for employment is the subject of an indicated child abuse or maltreatment report including an applicant to be a child day care provider and a request made pursuant to subdivision six of this section. Such fees shall be deposited in a special revenue - other account and shall be made available to the office for costs incurred in the implementation of this section.

(g) The office shall determine actions necessary to develop an automated search, available for the use of the office, of records at the statewide central registry of child abuse and maltreatment.

2. (a) Upon notification by the office or by a child care resource and referral program in accordance with subdivision six of this section that any person who has applied to a licensing agency for a license, certificate or permit or who seeks to become an employee of a provider agency, or to accept a child for adoptive placement or who will be hired as a consultant or used as a volunteer by a provider agency, or that any other person about whom an inquiry is made to the office pursuant to the provisions of this section is the subject of an indicated report, the licensing or provider agency shall determine on the basis of information it has available whether to approve such application or retain the employee or hire the consultant or use the volunteer or permit an employee of another person, corporation, partnership or association to have access to the individuals cared for by the provider agency, provided, however, that if such application is approved, or such employee is retained or consultant hired or volunteer used or person permitted to have access to the children cared for by such agency the licensing or provider agency shall maintain a written record, as part of the application file or employment record, of the specific reasons why such person was determined to be appropriate to receive a foster care or adoption placement or to provide day care services, to be the director of a camp subject to the provisions of article thirteen-B of the public health law, to be approved as a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, to be employed, to be retained as an employee, to be hired as a consultant, used as a volunteer or to have access to the individuals cared for by the agency.

(b) (i) Upon denial of such application by a licensing or a provider agency or failure to hire the consultant or use the volunteer, or denial of access by a person to the children cared for by the agency, or failure to approve a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, such agency shall furnish the applicant, prospective consultant, volunteer or person who is denied access to the children cared for by the agency with a written statement setting forth whether its denial, failure to hire or failure to use was based, in whole or in part, on such indicated report, and if so, its reasons for

the denial or failure to hire or failure to use.

(ii) Upon the termination of employment of an employee of a provider agency, who is the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment, the agency shall furnish the employee with a written statement setting forth whether such termination was based, in whole or in part, on such indicated report and, if so, the reasons for the termination of employment.

(c) If the reasons for such denial or termination or failure to hire a consultant or use a volunteer or failure to approve a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article include the fact that the person is the subject of an indicated child abuse or maltreatment report, such person may request from the department within ninety days of receipt of notice of such denial, termination, failure to hire a consultant or use a volunteer and shall be granted a hearing in accordance with the procedures set forth in section twenty-two of this chapter relating to fair hearings. All hearings held pursuant to the provisions of this subdivision shall be held within thirty days of a request for the hearing unless the hearing is adjourned for good cause shown. Any subsequent adjournment for good cause shown shall be granted only upon consent of the person who requested the hearing. The hearing decision shall be rendered not later than sixty days after the conclusion of the hearing.

(d) At any such hearing, the sole question before the department shall be whether the applicant, employee, prospective consultant, volunteer, prospective successor guardian or person who was denied access to the children cared for by a provider agency has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report. In such hearing, the burden of proof on the issue of whether an act of child abuse or maltreatment was committed shall be upon the local child protective service or the state agency which investigated the report, as the case may be. The failure to sustain the burden of proof at a hearing held pursuant to this section shall not result in the expungement or unbounding of an indicated report but shall be noted on the report maintained by the state central register and shall preclude the

department from notifying a party which subsequently makes an inquiry to the department pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report.

(e) Upon the failure, at the fair hearing held pursuant to this section, to prove by a fair preponderance of the evidence that the applicant committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the department shall notify the provider or licensing agency which made the inquiry pursuant to this section that it should reconsider any decision to discharge an employee, or to deny the subject's application for employment, or to become an adoptive parent, or to become a successor guardian, or for a certificate, license or permit; or not to hire a consultant, use a volunteer, or allow access to children cared for by the agency.

3. For purposes of this section, the term "provider" or "provider agency" shall mean: an authorized agency; the office of children and family services; a private, nonprofit incorporated agency that meets the state office of children and family services program standards for child advocacy centers; juvenile detention facilities subject to the certification of the office of children and family services; programs established pursuant to article nineteen-H of the executive law; non-residential or residential programs or facilities licensed or operated by the office of mental health or the office for people with developmental disabilities except family care homes; including head start programs which are funded pursuant to title V of the federal economic opportunity act of nineteen hundred sixty-four, as amended; early intervention service established pursuant to section twenty-five hundred forty of the public health law; preschool services established pursuant to section forty-four hundred ten of the education law; special act school districts as enumerated in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended; programs and facilities licensed by the office of alcoholism and substance abuse services; residential schools which are operated, supervised or approved by the education department; health homes, or any subcontractor of such health homes, who contracts with or is approved or otherwise authorized by the department of health to provide health home services to all those enrolled pursuant to a diagnosis of a developmental disability as

defined in subdivision twenty-two of section 1.03 of the mental hygiene law and enrollees who are under twenty-one years of age under section three hundred sixty-five-l of this chapter, or any entity that provides home and community based services to enrollees who are under twenty-one years of age under a demonstration program pursuant to section eleven hundred fifteen of the federal social security act; publicly-funded emergency shelters for families with children, provided, however, for purposes of this section, when the provider or provider agency is a publicly-funded emergency shelter for families with children, then all references in this section to the "potential for regular and substantial contact with individuals who are cared for by the agency" shall mean the potential for regular and substantial contact with children who are served by such shelter; and any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to the employment of staff, or use of providers of goods and services and staff of such providers, consultants, interns and volunteers.

4. For purposes of this section, the term "licensing agency" shall mean an authorized agency which has received an application to become an adoptive parent or an authorized agency which has received an application for a certificate or license to receive, board or keep any child pursuant to the provisions of section three hundred seventy-six or three hundred seventy-seven of this article or an authorized agency which has received an application from a relative within the second degree or third degree of consanguinity of the parent of a child or a relative within the second degree or third degree of consanguinity of the step-parent of a child or children, or the child's legal guardian for approval to receive, board or keep such child, or an authorized agency that conducts a clearance pursuant to paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, or a state or local governmental agency which receives an application to provide child day care services in a child day care center, school-age child care program, family day care home or group family day care home or enrolled legally-exempt provider as such term is defined in subdivision one-a of section three hundred ninety-b of this article pursuant to the provisions of section three hundred ninety of this

article, or the department of health and mental hygiene of the city of New York, when such department receives an application for a certificate of approval to provide child day care services in a child day care center pursuant to the provisions of the health code of the city of New York, or the office of mental health or the office for people with developmental disabilities when such office receives an application for an operating certificate pursuant to the provisions of the mental hygiene law to operate a family care home, or a state or local governmental official who receives an application for a permit to operate a camp which is subject to the provisions of article thirteen-B of the public health law or the office of children and family services which has received an application for a certificate to receive, board or keep any child at a foster family home pursuant to articles nineteen-G and nineteen-H of the executive law or any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to any licensing or certification function carried out by such facility or agency.

5. (a) The office of children and family services, after consultation with the justice center for the protection of people with special needs, the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the department of health, and the state education department shall develop guidelines to be utilized by a provider agency, as defined by subdivision three of this section, and a licensing agency, as defined by subdivision four of this section, in evaluating persons about whom inquiries are made to the office pursuant to this section who are the subjects of indicated reports of child abuse and maltreatment, as defined by subdivision four of section four hundred twelve of this chapter.

(b) The guidelines developed pursuant to subdivision one of this section shall not supersede similar guidelines developed by local governmental agencies prior to January first, nineteen hundred eighty-six.

6. A child care resource and referral program as defined in subdivision two of section four hundred ten-p of this article may

inquire of the office of children and family services and the office shall, upon receipt of such inquiry and subject to the provisions of paragraph (e) of subdivision one of this section, inform such program and the subject of such inquiry whether any person who has requested and agreed to be included in a list of substitute child day care caregivers for employment by registered or licensed day care providers maintained by such program in accordance with regulations promulgated by the office, is the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment. Inquiries made to the office by such programs pursuant to this subdivision shall be made no more often than once in any six month period and no less often than once in any twelve month period. Notwithstanding any provision of law to the contrary, a child care resource and referral program may redisclose such information only if the purpose of such redisclosure is to respond to a request for such information by a registered or licensed provider and only if after an individual included in the list of substitute child day care caregivers for employment by registered or licensed day care providers has consented to be referred for employment to such inquiring agency. Upon such referral, the provisions related to notice and fair hearing rights of this section shall otherwise apply. Inquiries made pursuant to this subdivision shall be in lieu of the inquiry requirements set forth in paragraph (b) of subdivision one of this section.

7. Any facility, provider agency, or program that is required to conduct an inquiry pursuant to section four hundred ninety-five of this chapter shall first conduct the inquiry required under such section. If the result of the inquiry under section four hundred ninety-five of this chapter is that the person about whom the inquiry is made is on the register of substantiated category one cases of abuse or neglect and the facility or provider agency is required to deny the application in accordance with article eleven of this chapter, the facility or provider agency shall not be required to make an inquiry of the office under this section.

§ 424-b. Children in the care of certain public and private agencies.

Notwithstanding any inconsistent provisions of law, when a report of child abuse or maltreatment involves a child being cared for in a home operated or supervised by an authorized agency or the office of children and family services, such report shall be accepted and maintained by the office of children and family services and shall be referred for the purposes of conducting an investigation to the appropriate staff within the office of children and family services where the child is in the care of such agency; and where the child is in a home operated or supervised by an authorized agency, to the social services district wherein such home is located. The office or social services district receiving such referral shall undertake an appropriate investigation of the report, in accordance with the terms and conditions set forth in this title. Any person who is alleged to have abused or maltreated a child in a report accepted and referred pursuant to this section shall be accorded the procedural rights set forth in section four hundred twenty-two and in subdivision six of section four hundred twenty-four of this title. Nothing in this section shall impose any duty or responsibility on any child protective service pursuant to section four hundred twenty-two, four hundred twenty-four or any other provision of this article.

§ 425. Cooperation of other agencies. 1. To effectuate the purposes of this title, the commissioner may request and shall receive from departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, or any duly authorized agency, or any other agency providing services under the local child protective services plan such assistance and data as will enable the department and local child protective services to fulfill their responsibilities properly. Nothing contained in this subdivision shall limit the department's authority under sections three hundred seventy-two, four hundred sixty-c and four hundred sixty-e of this chapter to access the records of authorized agencies.

2. The department, after consultation with the division for youth, the division of criminal justice services, the department of mental hygiene, the commission on quality of care for the mentally disabled and the

state education department shall develop guidelines to be utilized by appropriate state and local governmental agencies and authorized agencies as defined by subdivision ten of section three hundred seventy-one of this article which have responsibility for the care and protection of children, in evaluating persons who have a criminal conviction record and who have applied to such agencies or provider agencies, as defined in subdivision three of section four hundred twenty-four-a of this title for employment or who have applied to such state agencies or licensing agency as defined in subdivision four of section four hundred twenty-four-a of this title, for a license, certificate, permit or approval to be an adoptive parent, provider of day care services in a day care center, family day care home or group family day care home, an operator of a camp subject to the provisions of article thirteen-B of the public health law, or an operator of a foster family home subject to the provisions of subdivision seven of section five hundred one, section five hundred two or subdivision three of section five hundred thirty-two-a of the executive law or section three hundred seventy-six and three hundred seventy-seven of this article.

3. The guidelines developed pursuant to subdivision two of this section shall not supercede any similar guidelines developed by local governmental agencies prior to January first, nineteen hundred eighty-six.

§ 426. Annual reports. The commissioner shall prepare for inclusion in the annual report required by subdivision (d) of section seventeen of this chapter to be filed with the governor and the legislature prior to December fifteenth of each year, a report on the operations of the state central register of child abuse and maltreatment and the various local child protective services. The report shall include a full statistical analysis of the reports made to the central register together with a report on the implementation of this title, his or her evaluation of services offered under this chapter and his or her recommendations for additional legislation to fulfill the purposes of this title. Such report shall indicate the number of child abuse and maltreatment reports and cases received by the statewide central register of child abuse and

maltreatment by each district in the preceding year, the number of such cases determined to have been indicated and the number of such cases determined to be unfounded by each district in the preceding year, the number of such cases which have not been indicated or unfounded within the time period required by subdivision seven of section four hundred twenty-four of this article by each district in the preceding year and the number of workers assigned to the child protective service in each district in the preceding year. Such report shall include, among other information, available demographic information and available information concerning the racial and ethnic characteristics of the family members and persons served by the differential response program pursuant to section four hundred twenty-seven-a of the social services law, as well as available information concerning the racial and ethnic characteristics of the family members and persons serviced under the traditional child protective services program, in each local social services district in the state.

§ 427. Regulations of the commissioner. 1. The commissioner shall adopt regulations necessary to implement this title.

2. The commissioner shall establish, by regulation, standards and criteria under which the child protective service of the appropriate local department of social services as petitioner in abuse and neglect proceedings pursuant to article ten of the family court act shall not consent to an order pursuant to section one thousand thirty-nine of the family court act.

§ 427-a. Differential response programs for child protection assessments or investigations. 1. Any social services district may, upon the authorization of the office of children and family services, establish a program that implements differential responses to reports of child abuse and maltreatment. Such programs shall create a family assessment and services track as an alternative means of addressing certain matters otherwise investigated as allegations of child abuse or maltreatment pursuant to this title. Notwithstanding any other provision

of law to the contrary, the provisions of this section shall apply only to those cases involving allegations of abuse or maltreatment in family settings expressly included in the family assessment and services track of the differential response program, and only in those social services districts authorized by the office of children and family services to implement a differential response program. Such cases shall not be subject to the requirements otherwise applicable to cases reported to the statewide central register of child abuse and maltreatment pursuant to this title, except as set forth in this section.

2. Any social services district interested in implementing a differential response program shall apply to the office of children and family services for permission to participate. The criteria for a social services district to participate will be determined by the office of children and family services after consultation with the office for the prevention of domestic violence, however the social services district's application must include a plan setting forth the following:

(a) in conjunction with any additional requirements imposed by the office of children and family services and the provisions of this subdivision, the factors to be considered by the social services district in determining which cases will be addressed through the family assessment and services track and the size of the population to be the subject of the differential response program;

(b) the types of services and interventions to be provided to families included in the family assessment and services track and a description of how the services will be offered;

(c) a description of the process to be followed for planning and monitoring the services provided under the family assessment and services track;

(d) a description of how the principles of family involvement and support consistent with maintaining the safety of the child will be implemented in the family assessment and services track;

(e) a description of how the differential response program will enhance the ability of the district to protect children, maintain the safety of children and preserve families;

(f) a description of how the district will reduce the involvement of government agencies with families and maintain the safety of children

through the use of community resources;

(g) a description of the staff resources proposed to be used in the family assessment and services track, including the proposed staff workloads and qualifications;

(h) a description of the training that will be provided to district and any non-district staff to be used in the differential response program including, but not limited to, a description of the training involving maintaining the safety and well-being of children and any cross training planned for family assessment and investigative staff;

(i) a description of the community resources that are proposed to be used in the family assessment and services track;

(j) a description of any additional funding that may be utilized to enhance the differential response program; and

(k) a description of the protocol to be followed for handling cases where domestic violence is present in order to maintain the safety of the child through the family assessment and services track.

3. The criteria for determining which cases may be placed in the assessment track shall be determined by the local department of social services, in conjunction with the office of children and family services and after consultation with the office for the prevention of domestic violence. Provided, however, that reports including any of the following allegations shall not be included in the assessment track of a differential response program:

(a) reports alleging that the subject committed or allowed to be committed an offense defined in article one hundred thirty of the penal law;

(b) reports alleging that the subject allowed, permitted or encouraged a child to engage in any act described in sections 230.25, 230.30 and 230.32 of the penal law;

(c) reports alleging that the subject committed any of the acts described in section 255.25, 255.26 or 255.27 of the penal law;

(d) reports alleging that the subject allowed a child to engage in acts or conduct described in article two hundred sixty-three of the penal law;

(e) reports alleging that the subject committed assault in the first, second or third degree against a child;

(f) reports alleging that the subject committed or attempted to commit murder or manslaughter in the first or second degree;

(g) reports alleging that the subject abandoned a child pursuant to subdivision five of section three hundred eighty-four-b of this article;

(h) reports alleging that the subject has subjected a child to severe or repeated abuse as those terms are defined in paragraphs (a) and (b) of subdivision eight of section three hundred eighty-four-b of this article; and

(i) reports alleging that the subject has neglected a child so as to substantially endanger the child's physical or mental health, including a growth delay, which may be referred to as failure to thrive, that has been diagnosed by a physician and is due to parental neglect.

4. The following procedures shall be followed for all cases included in the family assessment and services track:

(a) Reports taken at the statewide central register of child abuse and maltreatment shall be transmitted to the appropriate local child protective service.

(b) A social services district permitted by the office of children and family services to participate in the implementation of a differential response program shall, consistent with the criteria developed pursuant to subdivision three of this section, identify those reports which are initially eligible to be included in the family assessment and services track.

(c) For those reports which are included in the family assessment and services track, the social services district shall not be subject to the requirements of this title concerning initial investigation of reports of suspected abuse and maltreatment of children, including notification requirements. For reports assigned to the family assessment and services track, the social services district shall be responsible for ensuring that the children are safe in their homes. Such safety assessment shall be commenced within twenty-four hours of receipt of the report and completed within seven days. Based on the initial safety assessment, the district shall determine if the report shall continue under the family assessment and services track. This safety assessment must be documented in the manner specified by the office of children and family services. Should the children be found to be safe in the home, the social services

district shall then identify service needs and family issues, if any, that should be addressed.

(i) Where the social services district determines, based on the initial safety assessment, that the report is appropriate to be included in the family assessment and services track, the social services district shall document the reason for that determination in the initial safety assessment and inform the statewide central register of child abuse and maltreatment that the report is part of the family assessment and services track and request that the records of the statewide central register of child abuse and maltreatment of such report be classified as an assessment track case and be legally sealed. Such sealed reports shall be maintained at the statewide central register of child abuse and maltreatment for ten years after the report was made. Access to reports assigned to, and records created under the family assessment and services track and information concerning such reports and records is governed by paragraph (d) of subdivision five of this section.

(ii) Where the social services district determines, based on the initial safety assessment, to investigate the report as a report of suspected child abuse or maltreatment, the social services district shall document the reason for that decision in the initial safety assessment. Where the social services district makes the determination to investigate the report, all of the requirements of this title concerning investigations of reports of suspected child abuse and maltreatment shall apply, including the notification requirements. The report shall no longer be eligible to be included in the family assessment and services track.

(d) Where the social services district has determined that a case is appropriate to be included in the family assessment and services track, the district's activities shall include, at a minimum, the following:

(i) the provision of written notice to each parent, guardian or other person legally responsible for the child or children participating in the family assessment and services track explaining that it is the intent of the social services district to meet the needs of the family without engaging in a traditional child protective services investigation. The notice shall also explain that the workers assisting the family in the family assessment and services track are mandated reporters who are required to report suspected child abuse or

maltreatment and that those workers are required to report new information that they receive in their work with the family if that information gives them reasonable cause to suspect that a child in the family is an abused or maltreated child;

(ii) an examination, with the family, of the family's strengths, concerns and needs;

(iii) where appropriate, an offer of assistance which shall include case management that is supportive of family stabilization;

(iv) the planning and provision of services responsive to the service needs of the family; and

(v) an on-going joint evaluation and assessment of the family's progress including ongoing, periodic assessments of risk to the child.

(e) After the social services district has received a report of suspected maltreatment and determined that the report is initially eligible to be included in the family assessment and services track, pursuant to paragraph (b) of this subdivision, the activities described in paragraphs (c) and (d) of this subdivision may be performed by the social services district directly or through any other method currently utilized by social services districts to obtain preventive services for children and families. If a community-based agency determines, pursuant to subparagraph (ii) of paragraph (c) of this subdivision, that a report must be investigated as a case of suspected child abuse or maltreatment, the community-based agency shall so inform the social services district, which shall then become responsible for conducting the child protective services investigation in accordance with the requirements of this title.

(f) A report selected for inclusion in the demonstration project shall cease to be eligible for inclusion in the demonstration project if at any time in the course of providing services the district or community-based agency finds that:

(i) there is evidence of child abuse, including sexual abuse; or

(ii) the parent or parents refuse to cooperate with the district or community-based agency in developing or implementing a plan to address the family problems or issues and there is evidence of maltreatment of a child.

(g) Where the district finds or is advised by a community-based agency, subsequent to the completion of the initial safety assessment

and after the report is legally sealed, that the report is no longer eligible for inclusion in the demonstration project pursuant to paragraph (f) of this subdivision, the district shall contact the statewide central register of child abuse and maltreatment and make a new report of suspected child abuse or maltreatment pursuant to section four hundred thirteen of this title.

(h) Where a report has been included in the family assessment and services track and a subsequent report involving the family is made to the statewide central register of child abuse and maltreatment, and such subsequent report is not eligible for inclusion in the family assessment and services track, the local child protective services, in conducting its investigation, shall work cooperatively with any district or community-based agency staff that are already working with the family to minimize to the extent practicable the chance that existing services being provided to the family will be disrupted and to maximize to the extent practicable the coordination of the existing services being provided to the family with any new services to be provided to the family.

5. (a) Cases included in the family assessment and services track shall not be subject to the requirements of section four hundred nine-e or four hundred nine-f of this article.

(b) All records created as part of the family assessment and services track shall include, but not be limited to, documentation of the initial safety assessment, the examination of the family's strengths, concerns and needs, all services offered and accepted by the family, the plan for supportive services for the family, all evaluations and assessments of the family's progress, and all periodic risk assessments.

(c) Records created under the family assessment and services track shall be maintained for ten years after the report initiating the case at the statewide central register was made.

(d) All reports assigned to, and records created under, the family assessment and services track, including but not limited to reports made or written as well as any other information obtained or photographs taken concerning such reports or records shall be confidential and shall be made available only to:

(i) staff of the office of children and family services and persons

designated by the office of children and family services;

(ii) the social services district responsible for the family assessment and services track case;

(iii) community-based agencies that have contracts with the social services district to carry out activities for the district under the family assessment and services track;

(iv) providers of services under the family assessment and services track;

(v) any social services district investigating a subsequent report of abuse or maltreatment involving the same subject or the same child or children named in the report;

(vi) a court, but only while the family is receiving services provided under the family assessment and services track and only pursuant to a court order or judicial subpoena, issued after notice and an opportunity for the subject of the report and all parties to the present proceeding to be heard, based on a judicial finding that such reports, records, and any information concerning such reports and records, are necessary for the determination of an issue before the court. Such reports, records and information to be disclosed pursuant to a judicial subpoena shall be submitted to the court for inspection and for such directions as may be necessary to protect confidentiality, including but not limited to redaction of portions of the reports, records, and information and to determine any further limits on redisclosure in addition to the limitations provided for in this title. A court shall not have access to the sealed family assessment and services reports, records, and any information concerning such reports and records, after the conclusion of services provided under the family assessment and services track; and

(vii) the subject of the report included in the records of the family assessment and services track.

(e) Persons given access to sealed reports, records, and any information concerning such reports and records, pursuant to paragraph (d) of this subdivision shall not redisclose such reports, records and information except as follows:

(i) the office of children and family services and social services districts may disclose aggregate, non-client identifiable information;

(ii) social services districts, community-based agencies that have contracts with a social services district to carry out activities for

the district under the family assessment and services track, and providers of services under the family assessment and services track, may exchange such reports, records and information concerning such reports and records as necessary to carry out activities and services related to the same person or persons addressed in the records of a family assessment and services track case;

(iii) the child protective service of a social services district may unseal a report, record and information concerning such report and record of a case under the family assessment and services track in the event such report, record or information is relevant to a subsequent report of suspected child abuse or maltreatment. Information from such an unsealed report or record that is relevant to the subsequent report of suspected child abuse and maltreatment may be used by the child protective service for purposes of investigation and family court action concerning the subsequent report and may be included in the record of the investigation of the subsequent report. If the social services district initiates a proceeding under article ten of the family court act in connection with such a subsequent report of suspected child abuse and maltreatment and there is information in the report or record of a previous case under the family assessment and services track that is relevant to the proceeding, the social services district shall include such information in the record of the investigation of the subsequent report of suspected child abuse or maltreatment and shall make that information available to the family court and the other parties for use in such proceeding provided, however, that the information included from the previous case under the family assessment and services track shall then be subject to all laws and regulations regarding confidentiality that apply to the record of the investigation of such subsequent report of suspected child abuse or maltreatment. The family court may consider the information from the previous case under the family assessment and services track that is relevant to such proceeding in making any determinations in the proceeding; and

(iv) a subject of the report may, at his or her discretion, present a report, records and information concerning such report and records from the family assessment and services track case, in whole or in part, in any proceeding under article ten of the family court act in which the subject is a respondent. A subject of the report also may, at his or her

discretion, present a report, records and information concerning such report and records from the family assessment and services track, in whole or in part, in any proceeding involving the custody of, or visitation with the subject's children, or in any other relevant proceeding. In making any determination in such a proceeding, the court may consider any portion of the family assessment and service track report, records and any information concerning such report and records presented by the subject of the report that is relevant to the proceeding. Nothing in this subparagraph, however, shall be interpreted to authorize a court to order the subject to produce such report, records or information concerning such report and records, in whole or in part.

6. Expenditures by a social services district pursuant to this section shall be reimbursable from the annual appropriations available for social services district expenditures for child welfare services which shall include, but not be limited to, preventive services provided pursuant to section four hundred nine-a of this article, child protective services, independent living services and any other appropriation made specifically to support these differential response programs. Nothing shall preclude a social services district from seeking private funds for support of their differential response programs.

7. The office of children and family services shall post the plan contained in any application approved for implementation of a differential response program on the office of children and family services website within sixty days of such approval.

8. The office of children and family services shall report on the differential response programs established pursuant to this section as part of the annual report required pursuant to section four hundred twenty-six of this title.

§ 428. Separability. If any provision of this title or the application thereof to any person or circumstances is held to be invalid, the remainder of the act and the application of such provision

to other persons or circumstances shall not be affected thereby.

TITLE 6-A
HOME VISITING

Section 429. Home visiting.

§ 429. Home visiting. 1. In accordance with a plan developed by the office of children and family services and approved by the director of the budget and within the amounts which the director of the budget determines should be made available therefor, such office, in conjunction with the department of health, is authorized to issue grants for home visiting programs to prevent child abuse and maltreatment, enhance positive parent child interactions, increase healthy outcomes for families and empower families to develop and achieve their self-sufficiency goals. To the extent that federal funds are used to support home visiting programs, such programs must be operated in accordance with all applicable federal laws and regulations. To the extent possible and appropriate, funding for the home visiting program shall be coordinated with other available funding to maximize the effective use of federal, state and local moneys and to promote the program's purposes.

2. Each home visiting program funded under this section shall include, but not be limited to, the following activities:

(a) providing screening of families in the targeted geographical area upon the birth of a child and prenatally, if possible;

(b) engaging those expectant parents and families with an infant determined to be at risk of child abuse or maltreatment and/or poor health outcomes to participate in the home visiting program;

(c) providing home visits by nurses or by community workers under the supervision of a health or social services professional to those at risk expectant parents and families who choose to participate in the program;

(d) requiring the home visitors to:

(i) assist parents in learning about child development principles;

(ii) assist parents in accessing appropriate preventive health care

for their children and themselves; and

(iii) link the families to other supports and activities in the community;

(e) determining the frequency of the home visiting services provided to each participating family based on the family's needs;

(f) continuing home visits for a particular family until the child enters school or a head start program, when necessary; and

(g) assisting families to develop and obtain the necessary supports to achieve their self-sufficiency goals.

3. A request for proposals shall be issued to solicit applications for home visiting programs. Priority for funding shall be given to applicants from communities identified as high need by such factors as poverty rates, rates of adolescent pregnancy, rates of child abuse and maltreatment, immunization rates and infant mortality rates.

4. Not-for-profit organizations and local public agencies such as community-based organizations, family resource centers, local health departments, local social services departments, schools, hospitals and other health agencies shall be eligible to apply for the grants available pursuant to this section.

5. Each applicant shall demonstrate among other things:

(a) a working relationship with the applicable local departments of health and social services and key services providers in the community;

(b) the commitment of local hospitals, prenatal clinics and early intervention programs servicing families in the targeted geographical area to promote the effective screening of families so that the program can be offered to the maximum number of at-risk expectant parents and families possible;

(c) its administrative and fiscal viability and the community's support for the home visiting program; and

(d) how the home visiting program would be integrated with other available services, programs and funding streams.

6. The commissioner of the office of children and family services shall establish policies governing enrollees' rights and

confidentiality, and each home visiting program shall, in accordance with such policies, inform enrollees of their rights, and of such policies governing confidentiality.

7. The office of children and family services shall submit to the governor and the legislature by December first, two thousand, and every three years thereafter, a report which shall include a review of all the home visiting programs funded under this section; and comments and recommendations based on a comprehensive evaluation regarding the most effective models for providing home visiting services and statutory changes which could improve the state's ability to prevent child abuse and maltreatment, improve healthy outcomes for families and empower families to develop and obtain their self-sufficiency goals.

8. Any home visiting program that meets the criteria delineated in this section as determined by factors set by the office of children and family services and the department of health, regardless of whether such program contracts with or receives funding from the state, may provide the necessary information to such offices as is required by subdivision (i) of section seventeen of this chapter or paragraph (w) of subdivision one of section two hundred one of the public health law in order for their program to be made available on the internet mapping resource maintained by the council on children and families pursuant to section four hundred eighty-three-h of this chapter.

TITLE 7

DAY SERVICES FOR CHILDREN AND FAMILIES

Section 430. Day services; when social services official may furnish.

431. Licensure.

432. State reimbursement; standards of payment.

433. Other state funding sources.

434. Funding limitations.

§ 430. Day services; when social services official may furnish. 1.
In order to preserve and stabilize family life, to prevent the need for

placement of children outside their homes, and to enable children in foster care to return to their families as expeditiously as possible, a social services official is authorized to provide day services at public expense to children and their families residing in his territory, pursuant to the provisions of this title.

2. Day services may be provided in cases where the social services official has determined that such services would promote or accomplish one or more of the following objectives:

(a) to avert a risk of serious impairment or disruption of a family unit which would result in the placement of a child outside his own home;

(b) to enable a child who has been placed in a child care institution or other group care facility to be placed in a foster care setting more closely oriented to community or family life;

(c) to enable a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible.

3. If the child's family is able to pay part or all of the costs of day services, such family shall be required to pay such fees therefor as may be reasonable in the light of such ability pursuant to regulations of the department.

4. Day services may be provided by a social services official either directly or through purchase. Purchase of such services may be made only from a private non-profit corporation or association, except when the commissioner shall have approved the purchase of such services from a private proprietary facility by a social services official who has demonstrated a lack of conveniently accessible non-profit facilities that are adequate to provide the required services.

5. As used in this title, "day services" shall mean care and treatment for part of the day of one or more children under eighteen years of age and their families in a program which provides to such children and families in accordance with their needs various services such as psychiatric, psychological, social casework, educational, vocational, health, transportation and such other services as may be

appropriate. Such services shall be provided in accordance with program standards promulgated by the department. Day services may be continued after the eighteenth birthday of a child in the care of an authorized agency and until he becomes twenty-one years of age. Day services shall not be provided to any children and their families for periods in excess of one year, without the approval of the department.

§ 431. Licensure. 1. No place, person, association, corporation, institution or agency shall operate a day services program without first obtaining a permit issued therefor by the department, or otherwise than in accordance with the terms of such permit and with the regulations of the department.

2. The department shall promulgate regulations specifying the procedures for obtaining a permit required pursuant to this section and enumerating the documentation needed for such a permit. The regulations shall also include program standards which the department shall develop with the advice of the board of social welfare, the department of mental hygiene and the department of education. An application for a permit pursuant to this section shall include full information regarding the applicant's efforts to secure funding for its day services program. The department shall advise and otherwise assist the applicant in obtaining funds where such funds may be available under the provisions of this and any other law.

3. The department shall not issue a permit for the operation of a day services program which includes the provision of care, treatment or services requiring licensure or any other form of approval from or by another state agency or official, unless such license or approval has been obtained. There shall be such cooperative and coordinated arrangements between and among the department and the state departments of mental hygiene and education and other appropriate state departments and agencies as shall be necessary to assure that applications for required licenses or other forms of approval will be processed expeditiously.

4. Before any permit issued pursuant to this section is suspended or revoked, or when an application for such permit is denied, the applicant or holder of the permit shall be entitled, pursuant to the regulations of the department, to a hearing before the department. However, a permit may be temporarily suspended or limited without a hearing for a period not in excess of thirty days upon written notice to the holder of the permit following a finding that the public health, or any individual's health, safety or welfare, is in imminent danger.

§ 432. State reimbursement; standards of payment. 1. (a)

Expenditures made by social services officials for day services programs and their administration pursuant to the provisions of this title shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department as follows: there shall be paid to each social services district (1) the amount of federal funds, if any, properly received or to be received on account of such expenditures; (2) fifty per centum of allowable expenditures for day services and its administration, after first deducting therefrom any federal funds properly received or to be received on account thereof and the amount of any fees paid to the social services official for day services. The local government share of the cost of day services may be met in whole or in part by donated private funds, exclusive of in-kind services.

(b) For purposes of this title, expenditures for administration of day services shall include expenditures for compensation of employees in connection with the furnishing of day services, including but not limited to costs incurred for pensions, federal old age and survivors insurance and health insurance for such employees; training programs for personnel, operation, maintenance and service costs; and such other expenditures as equipment costs, depreciation and charges and rental values as may be approved by the department. It shall not include expenditures for capital costs.

2. The department shall, after consultation with appropriate state agencies and with the approval of the the director of the budget, promulgate regulations establishing standards of payment for day

services provided children with public financial support. Such standards of payment shall include the services required to be provided to the child and his family and the cost of such services. When the department has established such standards, reimbursement under this section shall be limited in accordance with such standards.

3. (a) Claims for state reimbursement shall be made in such form and manner and at such times and for such periods as the department shall determine.

(b) When certified by the department, state reimbursement shall be paid from the state treasury upon the audit and warrant of the comptroller out of funds made available therefor.

4. Payment of state reimbursement shall be made to local fiscal officers as in the case of state reimbursement for public assistance and care under other provisions of this chapter.

§ 433. Other state funding sources. 1. Prior to purchasing day services pursuant to section four hundred thirty, a social services official shall inquire of the department, and the department shall inform him, as to the available funding sources, if any, of which the day services facility was advised pursuant to subdivision two of section four hundred thirty-one. The social services official shall not purchase services from the day services facility until he has determined that the facility has cooperated with the department in efforts to obtain funding from all available sources.

2. No state agency or official with authority, pursuant to this or any other law, to provide financial assistance for care, treatment or services which may be included in a day services program shall deny or reduce such assistance on the ground that such assistance is available under this title.

§ 434. Funding limitations. Notwithstanding any other provisions of this chapter the total amount of reimbursement to social services

districts pursuant to this title shall be limited to the amount of the annual appropriation made by the legislature for preventive services.

TITLE 8

STATE CHILD CARE REVIEW SERVICE

Section 440. Findings; purpose.

441. Definitions.

442. Child care review service; establishment, operations and procedure.

443. Advisory committee.

444. Confidentiality of records; related matters.

445. Funding.

446. Statewide automated child welfare information system.

§ 440. Findings; purpose. 1. The legislature finds that children who are in care away from their own homes on a full time basis, whether temporarily or for a prolonged period, require effective supervision and review of their status in care and of the plans for them. It is the policy of the state of New York to assure that such children are appropriately placed, that needed services are provided to them and their families, and that unnecessary and prolonged placements are avoided. The legislature further finds that this policy is often frustrated, and fiscal and program accountability have not been promoted because of divergent and overlapping jurisdictions of various government and private agencies; the lack of coordination among programs of these agencies; and the excessive workloads of judicial personnel, social services workers, and others responsible for reviewing the status in care of these children.

2. To assist in overcoming these difficulties, it is the intent of the legislature to establish a statewide management assistance system to be called the child care review service. The service shall be designed and operated to effectuate the following purposes:

(a) identification and assessment of the needs and problems of children in care and their families, to effectuate meaningful case

planning;

(b) case management and supervision by child care agencies of children in full-time care away from their homes;

(c) supervision and evaluation by state agencies of local and voluntary child care agency performance;

(d) planning and policy making by state agencies, the governor and the legislature;

(e) meeting in a timely manner all judicial review requirements of this chapter, the family court act and any other applicable provisions of law;

(f) reduction of the need for manual form preparation; and

(g) meeting federal reporting requirements so as to qualify for federal funds under the federal social security act.

§ 441. Definitions. As used in this title, the following terms shall have the following meanings:

1. "Service" shall mean the child care review service created by this title.

2. "Advisory committee" shall mean the committee established by section four hundred forty-three of this title.

§ 442. Child care review service; establishment, operations and procedure. 1. The department, in consultation with the advisory committee, shall establish and operate a child care review service to accomplish the purposes of this title, for all children who are in the care of an authorized agency and shall make such regulations as are appropriate to implement this title.

2. The service shall be implemented with respect to all children under the age of twenty-one years for whom an authorized agency is providing foster care as defined in subdivision (c) of section one thousand eighty-seven of the family court act and for whom an application is pending to an authorized agency for foster care.

3. The department is authorized to enter into agreements with any person, firm, organization or association for the whole or any part of the design or operation of the service as described in this title. Any such agreements shall specify that such person, firm, corporation or association shall safeguard the confidentiality of information received or maintained by the service, in the same manner, and will remain subject to the same confidentiality requirements, as the department. In addition, any such agreement shall require such person, firm, corporation or association to comply with other applicable federal and state laws protecting the confidentiality of the information received or maintained by the service.

4. The service shall collect, maintain, update, and distribute, as provided in this title, information from each authorized agency to further the purpose of this title.

5. The service may request from any authorized agency, and such agency shall submit to the service all information, including updating of information, in the form and manner and at such times as the department may require that is appropriate to the purposes and operation of the service.

6. Information to be submitted to or collected by the service, pursuant to subdivisions four and five, shall, to the extent possible, be in compatible form so as to facilitate the making of public policy decisions relating to child care programs supported by public funds and administered by various state, local and voluntary agencies.

7. In designing the service, the department, in consultation with the advisory committee, shall review all information reporting forms and financial claims forms, and shall make every effort to consolidate and, where appropriate, eliminate duplicative claiming and information reporting forms in order to develop uniform statewide claiming forms and information reporting forms.

8. Subject to regulations of the department the service shall:

- (a) prepare and make available on a regular basis to each authorized agency such data as they may require to meet the purposes of this title;
- (b) issue regular reports setting forth aggregate statewide and local statistical data with appropriate analyses, but not including individual identifying information; and
- (c) issue reports as to the capabilities of the service and the types of information maintained by the service.

9. The department in consultation with the advisory committee shall prepare and submit an annual report to the governor and the legislature as part of the annual report required to be filed prior to the fifteenth day of December of each year by subdivision (d) of section seventeen of this chapter on its progress in the development and operation of the service, including any significant problems encountered or anticipated in the design and operation of the service and any recommendations for administrative or legislative changes that would further the purposes of this title.

10. The state child care review service established pursuant to this title shall design and implement a system to:

- (a) monitor all financial claims made by social services districts for each child in foster care and child and family in receipt of preventive services pursuant to title four of this chapter;
- (b) compile and maintain a cumulative record of information with respect to actions taken on behalf of each individual child throughout his or her length of stay in foster care;
- (c) compile and maintain information on actions taken by local social services districts to initiate judicial proceedings as provided by section three hundred fifty-eight-a of this chapter and to comply with judicial orders made pursuant to section one thousand eighty-nine of the family court act, to refer legally free children to the state adoption service pursuant to section three hundred seventy-two-c of this chapter, and to comply with the provisions of section four hundred nine-e of this article and the regulations of the office of children and family services promulgated thereunder; and
- (e) compile and maintain comparative data for authorized agencies including, but not limited to, characteristics and numbers of children

entering care and their families, admissions practices, delineated reasons for initial and continued placement or provision of preventive or child protective services, length of stay in care, length of time in receipt of preventive services or child protective services, foster care reentry rates, number of children discharged to parents and relatives, the characteristics, numbers and rates of children leaving foster care through adoption, costs of care and preventive services and other information indicative of authorized agency performance.

§ 443. Advisory committee. 1. The department shall establish and meet regularly with an advisory committee of not more than twenty members to consider policy and planning issues relating to the service and to assist in the design, development, establishment and on-going operation of the service, including assisting in the resolution of issues concerning the safeguarding of the confidentiality of information. The advisory committee may in its discretion submit reports to the governor and the legislature.

2. The advisory committee shall be appointed by the commissioner, who shall appoint one of the committee's members to be its chairman. The members of the committee shall be appointed from the following categories, one or more from each category:

- (a) designees of the commissioner;
- (b) designees of the administrative judge of the state of New York;
- (c) designees of the director of the division of the budget;
- (d) commissioners of local social services districts or their designees;
- (e) representatives of voluntary child care agencies;
- (f) persons active in organizations involved in the protection of civil liberties;
- (g) persons active in organizations involved in promoting the interests of children.

§ 444. Confidentiality of records; related matters. 1. The department in consultation with the advisory committee shall make regulations;

(a) protecting the confidentiality of individual identifying information submitted to or provided by the service, and preventing access thereto, by, or the distribution thereof to, persons not authorized by law;

(b) setting forth procedures for informing any child or his representative of the nature of the system and its uses;

(c) allowing any child or his representative or any member of his family, an opportunity to review any information pertaining to such child or family and to request that any part of such information be amended or expunged; and

(d) providing that the service shall remove from its records and expunge the individual identifying information, excluding non-identifying child or family data to be used for historical purposes, concerning any child who has been discharged from care.

2. Prior to final promulgation of any regulations as described in subdivision one of this section, the department shall, in addition to complying with all other advance notice requirements make proposed regulations available to all state agencies charged with the administration or supervision of child care programs and to local government agencies and persons that have expressed an interest in safeguarding information maintained by the service, and shall provide such agencies with an opportunity to comment on the proposed regulations. In promulgating final regulations the department shall consider any comments received.

3. Any persons wilfully violating or failing to comply with the provisions of subdivision one of this section or wilfully violating or failing to comply with any regulation which the department is authorized under such subdivision to make, shall be guilty of a misdemeanor.

4. The regulations promulgated pursuant to subdivision one of this section, shall provide that the information compiled and maintained by the service pursuant to paragraph (d) of subdivision ten of section four hundred forty-two of this title shall be subject to the confidentiality provisions of title six of this article.

§ 445. Funding. The department shall explore the possibility of, and is authorized to take steps necessary to qualify for any available funding from any private source or from the federal government, and is authorized to use any funds for which the state qualifies for the purposes of the design, establishment or operation of the service.

§ 446. Statewide automated child welfare information system. (1) The department shall promulgate regulations required to implement federal requirements for the establishment and administration of a statewide automated child welfare information system as required by applicable federal statute and regulation. The regulations shall set forth standards for the timely submission of data elements relating to child welfare services, including foster care, adoption assistance, preventive services, child protective services and other family preservation and family support services.

(2) The statewide automated child welfare information system shall be designed to improve convenience to consumers of services and reduce the administrative burden of child welfare workers of social services districts and their contracted agencies which provide direct services. The statewide automated child welfare information system shall be designed to provide computers to the majority of individual child welfare workers of social services districts and their contracted agencies which provide direct child welfare services, allow such workers and agencies to communicate with and enter information directly into the statewide automated child welfare information system while preparing required documents and eliminate duplicate entry of information and preparation of documents, and allow for direct determination of claims and sanctions. The department shall immediately expand the existing advisory group of consumers, social services districts and their contracted agencies and other persons with expertise in child welfare. The statewide automated child welfare information system shall be designed to permit communication with the family courts and to protect the confidentiality of individuals as prescribed by this chapter.

TITLE 8-A

SAFE HARBOUR FOR EXPLOITED CHILDREN ACT

Section 447-a. Definitions.

447-b. Services for exploited children.

§ 447-a. Definitions. As used in this title:

1. The term "sexually exploited child" means any person under the age of eighteen who has been subject to sexual exploitation because he or she:

(a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law or the crime of sex trafficking of a child as defined in section 230.34-a of the penal law;

(b) engages in any act as defined in section 230.00 of the penal law;

(c) is a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law;

(d) engages in acts or conduct described in article two hundred sixty-three of the penal law.

2. The term "short-term safe house" means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of a runaway and homeless youth crisis services program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides emergency shelter, services and care to sexually exploited children including food, shelter, clothing, medical care, counseling and appropriate crisis intervention services at the time they are taken into custody by law enforcement and for the duration of any legal proceeding or proceedings in which they are either the complaining witness or the subject child. The short-term safe house shall also be available at the point in time that a child under the age of eighteen has first come into the custody of juvenile detention officials, law enforcement, local jails or the local commissioner of

social services or is residing with the local runaway and homeless youth authority.

3. The term "advocate" means an employee of the short-term safe house defined in subdivision two of this section that has been trained to work with and advocate for the needs of sexually exploited children. The advocate shall accompany the child to all court appearances and will serve as a liaison between the short-term safe house and the court.

4. The term "safe house" means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of an approved runaway program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides shelter for sexually exploited children. In addition, a long-term safe house may be operated by a transitional independent living support program as defined in subdivision six of section five hundred thirty-two-a of the executive law. A safe house serving sexually exploited children as defined in this title shall provide or assist in securing necessary services for such sexually exploited children either through direct provision of services, or through written agreements with other community and public agencies for the provision of services including but not limited to housing, assessment, case management, medical care, legal, mental health and substance and alcohol abuse services. Where appropriate such safe house in accordance with a service plan for such sexually exploited child may also provide counseling and therapeutic services, educational services including life skills services and planning services to successfully transition residents back to the community. Nothing in the provisions of this title or article nineteen-H of the executive law shall prevent a child who is the subject of a proceeding which has not reached final disposition from residing at the safe house for the duration of that proceeding nor shall it prevent any sexually exploited child who is not the subject of a proceeding from residing at the safe house. An advocate employed by a short-term safe house or other appropriate staff of a

short-term safe house shall, to the maximum extent possible, preferably within twenty-four hours but within no more than seventy-two hours following a sexually exploited child's admission into the program other than pursuant to a court order, notify such child's parent, guardian or custodian of his or her physical and emotional condition and the circumstances surrounding the child's presence at the program, unless there are compelling circumstances why the parent, guardian or custodian should not be so notified. Where such circumstances exist, the advocate or other appropriate staff member shall either file an appropriate petition in the family court, refer the youth to the local social services district, or in instances where abuse or neglect is suspected, report such case pursuant to title six of this article.

5. The term "community-based program" means a program operated by a not-for-profit organization that provides services such as street outreach, voluntary drop-in services, peer counseling, individual counseling, family-therapy and referrals for services such as educational and vocational training and health care. Any such community-based program may also work with the safe house serving sexually exploited children as defined in this title to provide transitional services to such children returning to the community.

§ 447-b. Services for exploited children. 1. Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district's multi-year consolidated services child welfare services plan address the child welfare services needs of sexually exploited children and to the extent that funds are available specifically therefor ensure that a short-term safe house or another short-term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children is available to children residing in such district. Nothing in this section shall prohibit a local social services district from utilizing existing respite or crisis intervention services already operated by such social services district or homeless youth

programs or services for victims of human trafficking pursuant to article ten-D of this chapter so long as the staff members have received appropriate training approved by the office of children and family services regarding sexually exploited children and the existing programs and facilities provide a safe, secure and appropriate environment for sexually exploited children. Crisis intervention services, short-term safe house care and community-based programming may, where appropriate, be provided by the same not-for-profit agency. Local social services districts may work cooperatively to provide such short-term safe house or other short-term safe placement, services and programming and access to such placement, services and programming may be provided on a regional basis, provided, however, that every local social services district shall to the extent that funds are available ensure that such placement, services and programs shall be readily accessible to sexually exploited children residing within the district.

2. All of the services created under this title may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of an adjournment in contemplation of dismissal issued in criminal court, through the diversion services created under section seven hundred thirty-five of the family court act, through a proceeding under article three of the family court act, a proceeding under article ten of the family court act or through a referral from a local social services agency.

3. The capacity of the crisis intervention services and community-based programs in subdivision one of this section shall be based on the number of sexually exploited children in each district who are in need of such services. A determination of such need shall be made in two thousand ten and every five years thereafter in every social services district by the local commissioner of social services and be included in the integrated county plan. Such determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local social services commissioners, the runaway and homeless youth coordinator for the local social services district, local law guardians, presentment agencies,

public defenders and district attorney's offices and child advocates and services providers who work directly with sexually exploited youth.

4. In determining the need for and capacity of the services created under this section, each local social services district shall recognize that sexually exploited youth have separate and distinct service needs according to gender and, where a local social services district determines that the need exists, to the extent that funds are available, appropriate programming shall be made available.

5. To the extent funds are specifically appropriated therefor, the office of children and family services shall contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate at least one long-term safe house in a geographically appropriate area of the state which shall provide safe and secure long term housing and specialized services for sexually exploited children throughout the state. The appropriateness of the geographic location shall be determined taking into account the areas of the state with high numbers of sexually exploited children and the need for sexually exploited children to find shelter and long term placement in a region that cannot be readily accessed by the perpetrators of sexual exploitation. The need for more than one long-term safe house shall be determined by the office of children and family services based on the numbers and geographical location of sexually exploited children within the state. Nothing herein shall be construed to preclude an agency from applying for and accepting grants, gifts and bequests of funds from private individuals, foundations and the federal government for the purpose of creating or carrying out the duties of a long-term safe house.

6. The local social services commissioner may, to the extent that funds are available, in conjunction with the division of criminal justice services and local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify

and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The division of criminal justice services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and the office of juvenile justice and delinquency prevention.

TITLE 9

SUBSIDIES FOR THE ADOPTION OF CHILDREN

- Section 450. Statement of legislative intent.
451. Definitions.
453. Maintenance subsidy; handicapped or hard to place child.
- 453-a. Payments for non-recurring adoption expenses.
454. Medical subsidy.
455. Fair hearings.
456. State reimbursement and payments.
457. Out-of-state adoptive parents.
458. Availability of subsidy; publicity.

§ 450. Statement of legislative intent. The legislature intends, by the enactment of this title, to promote permanency of family status through adoption for children who might not otherwise derive the benefits of that status. By providing for an adoption subsidy program which will be applied uniformly on a statewide basis, the legislature also intends to eliminate, or at the very least substantially reduce, unnecessary and inappropriate long-term foster care situations which have proven financially burdensome to the state and, more importantly, inimical to the best interests of many children who have not been placed for adoption because of emotional or physical handicaps, age or other factors, in accordance with regulations of the department.

§ 451. Definitions. As used in this title:

1. "Child" shall mean a person under the age of twenty-one years whose guardianship and custody have been committed to a social services official or a voluntary authorized agency, or whose guardianship and custody have been committed to a certified or approved foster parent pursuant to a court order prior to such person's eighteenth birthday, except as provided in paragraph (g) of subdivision three of section three hundred eighty-four-b of this article and section six hundred thirty-one of the family court act. A "child" shall also mean a person under the age of twenty-one years whose care and custody have been transferred prior to such person's eighteenth birthday to a social services official or a voluntary authorized agency pursuant to section one thousand fifty-five of the family court act or section three hundred eighty-four-a of this article, whose parents are deceased or where one parent is deceased and the other parent is not a person entitled to notice pursuant to section one hundred eleven-a of the domestic relations law, and where such official or agency consents to the adoption of such person in accordance with section one hundred thirteen of the domestic relations law.

2. "Handicapped child" shall mean a child who possesses a specific physical, mental or emotional condition or disability of such severity or kind which, in accordance with regulations of the department, would constitute a significant obstacle to the child's adoption.

3. "Hard to place child" shall mean a child, other than a handicapped child, (a) who has not been placed for adoption within six months from the date his guardianship and custody were committed to the social services official or a voluntary authorized agency, or (b) who has not been placed for adoption within six months from the date a previous adoption placement terminated and the child was returned to the care of the social services official or a voluntary authorized agency, or (c) who possesses or presents any personal or familial attribute, condition, problem or characteristic which, in accordance with regulations of the department, would be an obstacle to the child's adoption, notwithstanding the child has been in the guardianship and custody of the social services official or a voluntary authorized agency for less than six months.

4. (a) "Board rate" shall mean an amount equal to the monthly payment which has been or would have been made by a social services official, in accordance with section three hundred ninety-eight-a and other provisions of this chapter, for the care and maintenance of the child, if such child had been boarded out in a foster family boarding home. Such rate shall reflect annual increases in room and board rates and clothing replacement allowances.

(b) When a child is placed for adoption by a social services official or a voluntary authorized agency with adoptive parents residing in another social services district, the "board rate" shall mean the board rate of the social services district placing the child for adoption or the social services district in which the adoptive parents reside.

5. "Persons" shall include a single person eligible to adopt a child as well as a couple eligible therefor.

6. "Voluntary authorized agency" shall mean an authorized agency as defined in paragraphs (a) and (c) of subdivision ten of section three hundred seventy-one of this article.

7. "Social services official" shall mean a county commissioner of social services, a city commissioner of social services, or an Indian tribe with which the department has entered into an agreement to provide adoption services in accordance with subdivision two of section thirty-nine of this chapter.

§ 453. Maintenance subsidy; handicapped or hard to place child. 1. (a) A social services official shall make monthly payments for the care and maintenance of a handicapped or hard to place child whom a social services official has placed for adoption or who has been adopted and for the care and maintenance of a handicapped or hard to place child placed for adoption by a voluntary authorized agency who is residing in such social services district. Where a handicapped or hard to place child is placed in an adoptive placement outside the state, monthly payments for the care and maintenance of the child shall be made by the

social services official placing the child or in whose district the voluntary authorized agency maintains its principal office. Such payments shall be made until the child's twenty-first birthday to persons with whom the child has been placed, or to persons who have adopted the child and who applied for such payments prior to the adoption, pursuant to a written agreement therefor between such official or agency and such persons; provided, however, that an application may be made subsequent to the adoption if the adoptive parents first become aware of the child's physical or emotional condition or disability subsequent to the adoption and a physician certifies that the condition or disability existed prior to the child's adoption. The social services official shall consider the financial status of such persons only for the purpose of determining the amount of the payments to be made, pursuant to subdivision three of this section. Upon the death of persons who have adopted the child prior to the twenty-first birthday of the child, such payments shall continue to the legal guardian or custodian of the child under the age of eighteen upon issuance of letters of guardianship or order of custody and shall continue until the child shall attain the age of twenty-one. If the guardian or custodian was the caretaker of the child under the age of eighteen prior to the issuance of letters of guardianship or order of custody, such payments shall be made retroactively from the death of the adoptive parent or parents.

(a-1) Payments 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 local social services districts for such direct deposit or debit card services in accordance with section twenty-one-a of this chapter.

(b) Any child with respect to whom federally reimbursable maintenance subsidy payments are made under this subdivision shall be deemed to be a recipient of aid to families with dependent children for purposes of determining eligibility for medical assistance.

(c) No payments may be made pursuant to this subdivision if the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or the child is no

longer receiving any support from such parents. For purposes of this section:

(i) "any support" shall be limited to support that is directly for the benefit of the adopted child that meets the food, clothing, education, medical and shelter needs of the adopted child and that has an identifiable value;

(ii) "no longer legally responsible for the support of the child" means (A) the child has become legally emancipated, married or joined the military; (B) a court has ruled that the adoptive parent is no longer legally responsible for the support of the child; or (C) the adoption is no longer legally valid by operation of law.

(c-1) The social services official on an annual basis shall:

(i) require adoptive parents to certify that they are fulfilling their obligations pursuant to any adoption subsidy agreement entered into in accordance with this section, including their obligation to provide support for the child;

(ii) remind the adoptive parents of the following obligations, which shall also be included in any agreement entered into with an adoptive parent concerning payments made for the care and maintenance of the child pursuant to this section:

(A) to support the child;

(B) to notify the social services official if the adoptive parents are no longer providing any support of the child or are no longer legally responsible for the support of the child; and

(C) to notify the social services official if: (I) another person has been granted physical custody of the child; (II) another person has been appointed guardian for the child; or (III) the child no longer resides with the adoptive parents.

(c-2) (i) If the adoptive parents fail to respond to an annual certification notice within thirty days of the receipt of the certification notice from the social services official or the social services official receives from any person information that provides reasonable cause to suspect that the adoptive parents are no longer providing any support to the child, the social services official shall review whether the adoptive parents are legally responsible for the support of the child and whether the child is receiving any support from the adoptive parents. Circumstances in which the social services

official shall conduct this review include the following:

(A) the child has been placed in foster care;

(B) a person alleges to the social services official that:

(I) a person other than the adoptive parent has been granted legal custody of the child;

(II) another person has been appointed guardian for the child; or

(III) the child is reported to no longer reside with the adoptive parent.

(ii) The adoptive parents shall be given an opportunity to respond to the notice. Upon receiving confirmation that the parents continue to meet their legal obligations to provide support to the child, the department will take no further action to terminate the subsidy. If the parents fail to confirm that they continue to meet their legal obligations to provide support to the child, the social services official shall review all available information in order to confirm the parents' continued eligibility to receive the subsidy.

(iii) If the child is not in foster care and, based on a review of the available information, the social services official determines that the adoptive parents are no longer legally responsible for the support of the child or that the child is no longer receiving any support from the adoptive parents, the social services official shall terminate the subsidy provided to the adoptive parents pursuant to this section. The adoptive parents may appeal the termination of subsidy to the department in accordance with section twenty-two of this chapter.

(iv) If the child is in foster care and the social services official determines that the child is no longer receiving any support from the adoptive parents, the social services official may reduce, suspend, or terminate the assistance provided to the adoptive parents pursuant to this section. The adoptive parents may appeal the termination of assistance to the department in accordance with section twenty-two of this chapter. If assistance is reduced, suspended or terminated pursuant to this paragraph and the child is returned from foster care to the care of the adoptive parents, the social services official shall resume assistance effective from the date when the child was returned to the adoptive parent's care.

(d) Applications for such subsidies shall be accepted prior to the commitment of the guardianship and custody of the child to an authorized

agency pursuant to the provisions of this chapter, and approval thereof may be granted contingent upon such commitment.

(e) Upon the death of the sole or surviving adoptive parent or both adoptive parents after the eighteenth birthday and before the twenty-first birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, such subsidy payments shall continue but shall be made to the guardian of the child on behalf of such child, where the child consents to the appointment of a guardian. Such subsidy payments shall be made retroactively from the death of the adoptive parent or parents to the appointment of a guardian, and shall continue until the twenty-first birthday of the child. If, however, there is no willing or suitable person to be appointed as guardian, or the child does not consent to the appointment of a guardian, such subsidy payments shall be made retroactively from the death of the adoptive parent or parents and shall continue to be made until the twenty-first birthday of the child: (i) through direct payments to the child, if the social services official determines that the child demonstrates the ability to manage such direct payments; or (ii) to a representative payee certified by the social services official.

(f) Upon receipt of notification of the death of the sole or surviving adoptive parent or both adoptive parents after the eighteenth birthday and before the twenty-first birthday of the adopted child, where such adoptive parent or parents were receiving adoption subsidy payments at the time of death, the social services official shall notify the child of: (i) the processes available to continue subsidy payments until the twenty-first birthday of the child including appointment of a guardian under the surrogate's court procedure act, application to be approved for direct subsidy payments, or the appointment of a representative payee; and (ii) the right of the child to be involved in all such processes.

(g) Where the social services official has determined that the child does not demonstrate the ability to manage direct subsidy payments, the social services official shall certify payment to a representative payee on behalf of the child. Subsidy payments received by the representative payee shall be held and used strictly for the use and benefit of the child. Designation of the appropriate entity or individual and

investigation of an individual for certification as a representative payee shall be conducted by the social services official responsible for payment of the adoption subsidy pursuant to this section.

(i) The social services official may designate an employee of the social services district to be the representative payee responsible for receipt of the adoption subsidy on behalf of the child only where the official determines that such employee has no conflict of interest in performing the duties and obligations as representative payee. If the child resides in a social services district other than the district responsible for payment of the adoption subsidy, the social services district in which the child resides may be designated the representative payee and a social services official of such district shall select an employee of such social services district to be responsible for receipt of the adoption subsidy as the representative payee, only where the official determines that such employee has no conflict of interest in performing the duties and obligations as a payee. Where a voluntary authorized agency has a prior relationship with a child, or where the social services district does not have sufficient or appropriate staff available to perform the functions of the representative payee, the social services district may contract with a voluntary authorized agency as the representative payee on behalf of the child where the social services district determines it would be in the best interests of the child to do so.

(ii) The social services official may designate an individual for certification as a representative payee who shall perform the functions and duties of a representative payee in accordance with the best interests of the child. In determining whether an individual is appropriate to be certified as the representative payee, the social services official shall first consult with the child and shall give the child's preferences significant weight. The child's preference shall be determinative of the representative payee only where such preference does not conflict with the best interests of the child. Prior to designation of an individual by the social services official for certification as a representative payee, the social services official shall:

(A) collect proof of identity and a verifiable social security number of the nominated representative payee;

(B) conduct an in-person interview of the individual;

(C) investigate any potential conflicts of interest that may ensue if such individual is certified; and

(D) determine the capabilities and qualifications of the individual to manage the subsidy payment for the child.

(iii) (A) If, after completion of the investigation, the social services official is satisfied that the individual is qualified, appropriate and will serve the best interests of the child, the social services official shall certify the selected individual as the representative payee for the child.

(B) If the twenty-first birthday of the child occurs while awaiting the certification of a representative payee, the child shall be entitled to retroactive direct payment of subsidy payments since the death of the adoptive parent or parents after the eighteenth birthday of the child.

(iv) The representative payee shall submit reports to the social services official no less than once a year describing the use of the payments in the preceding year. Such reports shall be submitted by December thirty-first of each year. The social services official may also request reports from time to time from the representative payee. If a representative payee fails to submit a report, the social services official may require that the representative payee appear in person to collect payments. The social services official shall keep a centralized file and update it periodically with information including the addresses and social security or tax-payer identification numbers of the representative payee and the child.

(v) The social services official shall revoke the certification of a representative payee upon:

(A) determining that the representative payee has misused the payments intended for the benefit of the child;

(B) the failure of the representative payee to submit timely reports or appear in person as required by the social services official after such failure; or

(C) the request of the child upon good cause shown.

(vi) The social services official shall notify the child of the contact information of the representative payee within five days of making a designation.

(vii) A child may appeal the refusal of the social services official

to certify the individual preferred by the child for certification as the representative payee or revoke the certification of a representative payee upon request of the child pursuant to section four hundred fifty-five of this title.

2. Any agreement provided for in subdivision one of this section shall be subject to the approval of the department upon the application of the social services official; provided, however, that in accordance with the regulations of the department, the department may authorize the social services official to approve or disapprove the agreement on behalf of the department. In either situation, if the agreement is not approved or disapproved by the social services official within thirty days of submission, the voluntary authorized agency may submit the agreement directly to the department for approval or disapproval. If the agreement is not disapproved in writing by the department within thirty days after its submission to the department, it shall be deemed approved. Any such disapproval shall be accompanied by a written statement of the reasons therefor.

3. The amount of the monthly payment made pursuant to this section shall be determined pursuant to regulations of the department and based upon the financial need of such persons. The department shall review such regulations annually. The amount of the monthly payment shall not be less than seventy-five per centum of the board rate nor more than one hundred per centum of such rate.

4. Except as may be required by federal law as a condition for federal reimbursement of public assistance expenditures, payments under this section shall not be considered for the purpose of determining eligibility for public assistance or medical assistance for needy persons.

§ 453-a. Payments for non-recurring adoption expenses. 1. A social services official shall make payments for non-recurring adoption expenses incurred by or on behalf of the adoptive parents of a child with special needs, when such expenses are incurred in connection with

the adoption of a child with special needs through an authorized agency. In accordance with subdivision two of this section, the payments shall be made by the social services official either to the adoptive parents directly, to the authorized agency on behalf of the adoptive parents or to an attorney on behalf of the adoptive parents for the allowable amount of attorney's fees or court costs incurred in connection with such completed adoption.

2. The amount of the payment made pursuant to this section shall be determined pursuant to the regulations of the department. Nothing herein shall obligate a social services official to make payments for the full amount of non-recurring adoption expenses incurred by or on behalf of the adoptive parents of a child with special needs.

3. Payments for non-recurring adoption expenses made by a social services official pursuant to this section shall be treated as administrative expenditures under title IV-E of the social security act and shall be reimbursed by the state accordingly.

4. Payments under this section shall be made pursuant to a written agreement between the social services official, other relevant authorized agencies and the adoptive parents of a child with special needs. The written agreement shall specify the nature and amount of any payments, services and assistance to be provided, shall stipulate that the agreement remain in effect regardless of the state of residence of the adoptive parents at any time and shall contain provisions for the protection of the interests of the child where the adoptive parents and the child move to another state while the agreement is effective. Applications for such subsidies shall be accepted prior to the commitment of the guardianship and custody of the child to an authorized agency pursuant to the provisions of this chapter, and approval thereof may be granted contingent upon such commitment.

5. When the parental rights of a child with special needs have been terminated in this state and the child's guardianship has been committed to an authorized agency, the child is adopted in another state and the adoptive parents are not eligible for payments of non-recurring

adoption expenses in the other state, a social services official shall make payments of the non-recurring adoption expenses incurred by or on behalf of the adoptive parents, if such parents are otherwise eligible for payments under subdivision one of this section.

6. As used in this section, non-recurring adoption expenses shall mean reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of federal law or the laws of this state or any other state.

7. As used in this section, a child with special needs shall mean a child who:

(a) the state has determined cannot or shall not be returned to the home of his or her parents; and

(b) the state has first determined:

(i) is a handicapped child as defined in subdivision two of section four hundred fifty-one of this title, or is a hard-to-place child as defined in paragraph (c) of subdivision three of section four hundred fifty-one of this title; and

(ii) a reasonable, but unsuccessful effort has been made to place the child with appropriate adoptive parents without adoption assistance. Such an effort need not be made where such efforts would not be in the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child.

§ 454. Medical subsidy. 1. A social services official shall make payments for the cost of care, services and supplies payable under the state's program of medical assistance for needy persons, provided to a handicapped child whom he or a voluntary authorized agency has placed out for adoption or who has been adopted. Such payments shall not be restricted to care, services and supplies required for the treatment of the specific condition or disability for which a child was determined to be a handicapped child. For the purposes of this section, a handicapped child shall include, but not be limited to, a child with special needs

where a social services official has determined the child cannot be placed with an adoptive parent or parents without medical subsidy because such child has special needs for medical, mental health or rehabilitative care. Such payments also shall be made with respect to a hard to place child who has been placed out for adoption with a person or persons who is or are sixty-two years old or over or who will be subject to mandatory retirement from his or their present employment within five years from the date of the adoption placement.

2. Payments pursuant to subdivision one of this section shall be made to or on behalf of the person or persons with whom the child has been placed or who have adopted the child and shall be made without regard to the financial need of such person or persons.

3. Payments pursuant to subdivision one of this section shall be made only with respect to the cost of care, services and supplies which are not otherwise covered or subject to payment or reimbursement by insurance, medical assistance or other sources.

4. An application for payment under this section shall be made prior to the child's adoption; provided, however, that an application may be made subsequent to a handicapped child's adoption if the adoptive parents first become aware of the child's physical or emotional condition or disability subsequent to the adoption and a physician certifies that the condition or disability existed prior to the child's adoption. An approval of an application for payments under this section shall not be subject to annual review by the social services official, and such approval shall remain in effect until the child's twenty-first birthday. Applications for such subsidies shall be accepted prior to the commitment of the guardianship and custody of the child to an authorized agency pursuant to the provisions of this chapter, and approval thereof may be granted contingent upon such commitment.

5. Upon the death of persons who have adopted the child prior to the twenty-first birthday of the child, payments pursuant to subdivision one of this section shall continue to the legal guardian of the child until the child shall attain the age of twenty-one.

§ 455. Fair hearings. 1. Any person aggrieved by the decision of a social services official or an official of the office of children and family services not to make a payment or payments pursuant to this title or to make such payment or payments in an inadequate or inappropriate amount or the failure of a social services official or an official of the office of children and family services to determine an application under this title within thirty days after filing, may appeal to the office of children and family services which shall review the case, give such person an opportunity for a fair hearing thereon, and render its decision within thirty days. The office of children and family services may also, on its own motion, review any such decision made by a social services official or any case in which a decision has not been made within the time specified. All decisions of the office of children and family services shall be binding upon the social services district involved and shall be complied with by the social services official thereof.

2. The only issues which may be raised in a fair hearing under this section are (a) whether the social services official or an official of the office of children and family services has improperly denied an application for payments under this title, or (b) whether the social services official or an official of the office of children and family services has improperly discontinued payments under this title, or (c) whether the social services official or an official of the office of children and family services has determined the amount of the payments made or to be made in violation of the provisions of this title or the regulations of the office of children and family services promulgated hereunder, or (d) whether the social services official improperly refused to certify the individual preferred by a child for certification as the representative payee or improperly denied a request by a child to revoke the certification of a representative payee pursuant to section four hundred fifty-three of this title.

3. When an issue is raised as to whether a social services official or an official of the department has improperly denied an application for

payments under this title, the department shall affirm such denial if: (a) the child is not a hard to place child or a handicapped child or (b) there is another approved adoptive parent or parents who is or are willing to accept the placement of the child in his or their home without payment under this title within sixty days of such denial and placement of the child with such other parent or parents would not be contrary to the best interests of the child.

4. The provisions of subdivisions two and four of section twenty-two of this chapter shall apply to fair hearings held and appeals taken pursuant to this section.

§ 456. State reimbursement and payments. 1. Payments made by social services officials pursuant to the provisions of this title shall, if approved by the department, be subject to reimbursement by the state, in accordance with the regulations of the department as follows: there shall be paid to each social services district (a) the amount of federal funds, if any, properly received or to be received on account of such payments; and (b) except as set forth below, seventy-five per centum of such payments after first deducting therefrom any federal funds properly received or to be received on account thereof; provided, however, that when payments under section four hundred fifty-three of this title are made to a person or persons residing in a social services district whose board rate exceeds that of the district making such payments, that portion of the payments which exceeds the board rate of the district making the payments shall be subject to reimbursement by the state in the amount of one hundred per centum thereof, or (c) one hundred per centum of such payments after first deducting therefrom any federal funds properly to be received on account of such payments, for children placed out for adoption or being adopted after being placed out for adoption by an Indian tribe as referenced in subdivision seven of section four hundred fifty-one of this title.

2. (a) Claims for state reimbursement shall be made in such form and manner and at such times and for such periods as the department shall determine.

(b) When certified by the department, state reimbursement shall be paid from the state treasury upon the audit and warrant of the comptroller out of funds made available therefor.

3. Notwithstanding any other provision of law to the contrary, for a child who has been placed for adoption by a voluntary authorized agency with guardianship and custody or care and custody of such child, as referenced in subdivision one of section four hundred fifty-one of this title, payments available under section four hundred fifty-three, four hundred fifty-three-a or four hundred fifty-four of this title shall be made by the state pursuant to a written agreement between an official of the office of children and family services and the persons who applied for such payments prior to adoption. Notwithstanding any other provision of law to the contrary, the office of children and family services shall not enter into written agreements for, or issue, any such payments in instances where the person or persons applying for such payments reside outside of the state of New York at the time the application for such payments is made.

§ 457. Out-of-state adoptive parents. With respect to a child who has been adopted within this state but who has been removed from this state by his adoptive parents, or a child who has been adopted by residents of another state or of the commonwealth of Puerto Rico and who is, or who is likely to become, a public charge within this state, payments under section four hundred fifty-three or four hundred fifty-four of this title may be made pursuant to an agreement between the district and the adoptive parents, provided that such agreement is in accordance with the regulations of the department promulgated to achieve the objective of increasing the number of adoptions of potential public charges, with particular emphasis upon handicapped and hard to place children. Any such agreement shall become void at such time as it is determined by the social services official that a child on whose behalf payments are being received pursuant to such agreement was brought into this state for the sole purpose of qualifying prospective out-of-state adoptive parents for such payments. Such determination may be appealed to the department which, upon receipt of the appeal, shall

conduct a fair hearing in accordance with the provisions of section four hundred fifty-five of this title.

§ 458. Availability of subsidy; publicity. The department shall promulgate regulations providing for the publicizing of the availability of payments under this title. Such regulations shall provide for the dissemination of literature and other means in each social services district of informing persons, at the time of any inquiry, application or other expression of interest in adoption, of the provisions of the adoption subsidy program. Additionally, each social services district and authorized agency shall provide information on the adoption subsidy program to all foster care parents who are caring for a child who is eligible for adoption.

TITLE 10

KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM

Section 458-a. Definitions.

- 458-b. Kinship guardianship assistance payments.
- 458-c. Payments for non-recurring guardianship expenses.
- 458-d. Medical subsidy.
- 458-e. Independent living services.
- 458-f. Fair hearings.

§ 458-a. Definitions. As used in this title:

1. "Child" shall mean a person under the age of twenty-one years whose custody, care and custody, or custody and guardianship have been committed to a social services official prior to such person's eighteenth birthday pursuant to section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four, three hundred eighty-four-a or three hundred eighty-four-b of this chapter or article three, seven, ten or 10-C of the family court act.

2. "Applicable board rate" shall mean an amount equal to the monthly

payment that has been made by a social services official, in accordance with section three hundred ninety-eight-a of this article and other provisions of this chapter, for the care and maintenance of the child, while such child was boarded out in the approved or certified foster family boarding home with the prospective relative guardian. Such rate shall reflect annual changes in room and board rates and clothing replacement allowances.

3. "Prospective relative guardian" shall mean a person who has been caring for the child as a fully certified or approved foster parent for at least six consecutive months prior to applying for kinship guardianship assistance payments and who:

(a) is related to the child through blood, marriage, or adoption; or

(b) is related to a half-sibling of the child through blood, marriage or adoption and where such person or persons is or are also the prospective or appointed relative guardian or guardians of such half-sibling; or

(c) is an adult with a positive relationship with the child, including, but not limited to, a step-parent, godparent, neighbor or family friend.

4. "Relative guardian" shall mean a person or persons who was appointed, as a guardian or permanent guardian for a child after entering into an agreement with a social services official for the receipt of payments and services in accordance with this title.

5. "Social services official" shall mean a county commissioner of social services, a city commissioner of social services, or an Indian tribe with which the office of children and family services has entered into an agreement to provide foster care services in accordance with subdivision two of section thirty-nine of this chapter.

6. "Successor guardian" shall mean a person or persons that is approved by a local social services district to receive payments pursuant to this title in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this title and that has been named in the agreement in effect between the

relative guardian and social services official for kinship guardianship assistance payments pursuant to this title who shall provide care and guardianship for a child in the event of death or incapacity of the relative guardian, as set forth in section four hundred fifty-eight-b of this title, who has assumed care for and is the guardian or permanent guardian of such child, provided that such person was appointed guardian or permanent guardian of such child by the court following, or due to, the death or incapacity of the relative guardian. Once approved in accordance with subparagraph (ii) of paragraph (b) of section four hundred fifty-eight-b of this title, a successor guardian shall be deemed to have the same rights and responsibilities as a relative guardian in relation to any provisions of this title and any agreement entered into under this title.

7. "Prospective successor guardian" shall mean a person or persons whom a prospective relative guardian or a relative guardian seeks to name or names in the original kinship guardianship assistance agreement, or any amendment thereto, as set forth in section four hundred fifty-eight-b of this title, as the person or persons to provide care and guardianship for a child in the event of the death or incapacity of a relative guardian, who has not been approved in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this title.

8. "Incapacity" shall mean a substantial inability to care for a child as a result of: (a) a physically debilitating illness, disease or injury; or (b) a mental impairment that results in a substantial inability to understand the nature and consequences of decisions concerning the care of a child.

§ 458-b. Kinship guardianship assistance payments. 1. A child is eligible for kinship guardianship assistance payments under this title if the social services official determines the following:

(a) The child has been in foster care for at least six consecutive months in the home of the prospective relative guardian; and

(b) The child being returned home or adopted are not appropriate

permanency options for the child; and

(c) The child demonstrates a strong attachment to the prospective relative guardian and the prospective relative guardian has a strong commitment to caring permanently for the child; and

(d) That age appropriate consultation has been held with the child, provided however with respect to a child who has attained fourteen years of age, that the child has been consulted regarding the kinship guardianship arrangement, and with respect to a child who has attained eighteen years of age, that the child has consented to the kinship guardianship arrangement.

(e) (i) If the child has been placed into foster care pursuant to article ten or ten-C of the family court act, that both the fact finding hearing pursuant to section one thousand fifty-one of the family court act or section one thousand ninety-five of the family court act, respectively, and the first permanency hearing pursuant to paragraph two of subdivision (a) of section one thousand eighty-nine of the family court act have been completed; or

(ii) for all the other children, that the first permanency hearing has been completed.

(f) The financial status of the prospective relative guardian shall not be considered in determining eligibility for kinship guardianship assistance payments.

1-a. A child shall remain eligible for kinship guardianship assistance payments under this title when a successor guardian as defined in subdivision six of section four hundred fifty-eight-a of this title assumes care and guardianship of the child.

2. (a) A prospective relative guardian who has been caring for an eligible foster child for at least six consecutive months and who intends to seek guardianship or permanent guardianship of the child may apply to the social services official who has custody, care and custody, or guardianship and custody of the child to receive kinship guardianship assistance payments, non-recurring guardianship payments, and other applicable services and payments available under this title on behalf of the child.

(b) Applications shall only be accepted prior to issuance of letters

of guardianship of the child to the relative guardian pursuant to the provisions of the family court act or the surrogate's court procedure act.

(c) Notwithstanding any other provision of law to the contrary, a prospective relative guardian and any person over the age of eighteen living in the home of the prospective relative guardian who has not already been subject to a national and state criminal history record check pursuant to section three hundred seventy-eight-a of this article as part of the process of the prospective relative guardian becoming a certified or approved foster parent must complete such a record check in accordance with the procedures and standards set forth in such section prior to the social services official acting upon the application. The social services official must inquire of the office of children and family services whether each prospective relative guardian and each person over the age of eighteen living in the home of the prospective relative guardian has been or is currently the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment and, if the prospective relative guardian or any other person over the age of eighteen residing in the home of the prospective relative guardian resided in another state in the five years preceding the application, request child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence, if such a request has not been made as part of the process of the prospective relative guardian becoming a certified or approved foster parent.

(d) (i) Notwithstanding any other provision of law to the contrary, prior to the social services official approving a prospective successor guardian to receive payments pursuant to this title in accordance with subparagraph (ii) of paragraph (b) of subdivision five of this section: (1) the social services official must complete a national and state criminal history record check pursuant to subdivision two of section three hundred seventy-eight-a of this article for the prospective successor guardian and any person over the age of eighteen living in the home of the prospective successor guardian, in accordance with the procedures and standards set forth in such subdivision; and (2) the social services official must inquire of the office of children and

family services, in accordance with section four hundred twenty-four-a of this article, whether each prospective successor guardian and each person over the age of eighteen living in the home of the prospective successor guardian has been or is currently the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment and, if the prospective successor guardian or any other person over the age of eighteen residing in the home of the prospective successor guardian resided in another state in the five years preceding the inquiry, request child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence.

(ii) It shall be the duty of the prospective successor guardian to inform the social services official that has entered into an agreement with the relative guardian for payments under this title in writing of the death or incapacity of the relative guardian and of the prospective successor guardian's desire to enforce the provisions in the agreement that authorize payment to him or her in the event of the death or incapacity of the relative guardian.

(iii) The clearances requires by subparagraph (i) of this paragraph shall be conducted following receipt by the social services official of the written communication required by subparagraph (ii) of this paragraph.

3. If the social services official determines that the child is eligible for kinship guardianship assistance payments and it is in the best interests of the child for the relative to become the legal guardian of the child, the social services official shall enter into an agreement with the prospective relative guardian authorizing the provision of kinship guardianship assistance payments, non-recurring guardianship payments, and other services and payments available under this title subject to the issuance by the court of letters of guardianship of the child to the prospective relative guardian and the child being finally discharged from foster care to such relative. In determining whether it is in the best interests of the child for the relative to become the relative guardian of the child, the social services official must determine and document that compelling reasons

exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options. A copy of the fully executed agreement must be provided by the social services official to the prospective relative guardian.

4. (a) Payments and eligibility for services under this title shall be made pursuant to a written agreement between the social services official and the prospective relative guardian.

(b) The written agreement shall specify, at a minimum: the amount of, and manner in which, each kinship guardianship assistance payment will be provided under the agreement; the manner in which the payments may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child; the additional services and assistance that the child and the relative guardian will be eligible for under the agreement, which shall be limited to the additional services and assistance set forth in this title; the procedures by which the relative guardian may apply for additional services, as needed; that the social services official will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed two thousand dollars in accordance with section four hundred fifty-eight-c of this title; and, that the agreement will remain in effect regardless of the state of residence of the relative guardian at any time.

(c) The agreement must be fully executed prior to the issuance of letters of guardianship of the child to the relative guardian in order for the child to be eligible for payments and services under this title.

(d) Payments 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 section twenty-one-a of this chapter and 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 local social services districts for such direct deposit or debit card services in accordance with section twenty-one-a of this chapter.

(e) The original kinship guardianship assistance agreement executed in

accordance with this section and any amendments thereto may name an appropriate person to act as a successor guardian for the purpose of providing care and guardianship for a child in the event of death or incapacity of the relative guardian. Nothing herein shall be deemed to require the relative guardian to name a prospective successor guardian as a condition for the approval of a kinship guardianship assistance agreement.

(f) A fully executed agreement between a relative guardian and a social services official may be amended to add or modify terms and conditions mutually agreeable to the relative guardian and the social services official, including the naming of an appropriate person to provide care and guardianship for a child in the event of death or incapacity of the relative guardian.

(g) The social services official shall inform the relative guardian of the right to name an appropriate person to act as a successor guardian in the original kinship guardianship assistance agreement or through an amendment to such agreement.

(h) A fully executed agreement between a relative guardian or a successor guardian and a social services official may be terminated if:

(i) in accordance with paragraph (b) of subdivision seven of this section, a social services official has determined that a relative guardian or a successor guardian is no longer legally responsible for the support of the child; or

(ii) following the death or permanent incapacity of a relative guardian, all prospective successor guardians named in such agreement were not approved by the social services district pursuant to subparagraph (ii) of paragraph (b) of subdivision five of this section.

5. (a) Once the prospective relative guardian with whom a social services official has entered into an agreement under subdivision four of this section has been issued letters of guardianship for the child and the child has been finally discharged from foster care to such relative, a social services official shall make monthly kinship guardianship assistance payments for the care and maintenance of the child.

(b) (i) In the event of death or incapacity of a relative guardian, a social services district shall make monthly kinship guardianship

assistance payments for the care and maintenance of a child to a successor guardian that has been approved pursuant to subparagraph (ii) of this paragraph.

(ii) Following the death or incapacity of the relative guardian, a social services official shall approve a prospective successor guardian that is named in the agreement between the relative guardian and a social services official for payments under this title and that has been awarded guardianship or permanent guardianship of the child by the court unless, based on the results of the clearances required by paragraph (d) of subdivision two of this section, the social services official has determined that approval of the prospective successor guardian is not authorized or appropriate. Provided however, that no approval can be issued pursuant to this paragraph unless the prospective successor guardian has been awarded guardianship or permanent guardianship of the child by the court and the clearances required by paragraph (d) of subdivision two of this section have been conducted.

(iii) Notwithstanding any other provision of law to the contrary, if a prospective successor guardian assumes care of the child prior to being approved pursuant to subparagraph (ii) of this paragraph, payments under this title shall be made once a prospective guardian is approved pursuant to such subparagraph retroactively from: (1) in the event of death of the relative guardian, the date the successor guardian assumed care of the child or the date of death of the relative guardian, whichever is later; or (2) in the event of incapacity of the relative guardian, the date the successor guardian assumed care of the child or the date of incapacity of the relative guardian, whichever is later.

(c) In the event that a successor guardian assumed care and was awarded guardianship or permanent guardianship of a child due to the incapacity of a relative guardian and the relative guardian is subsequently awarded or resumes guardianship or permanent guardianship of such child and assumes care of such child after the incapacity ends, a social services official shall make monthly kinship guardianship assistance payments for the care and maintenance of the child to the relative guardian, in accordance with the terms of the fully executed written agreement.

6. The amount of the monthly kinship guardianship assistance payment

made pursuant to this section shall be determined pursuant to regulations of the office. The amount of the monthly payment shall not be less than seventy-five per centum of the applicable board rate nor more than one hundred per centum of such rate as determined by the social services district in accordance with the regulations of the office; provided, however, that the rate chosen by the social services district shall be equal to the rate used by the district for adoption subsidy payments under section four hundred fifty-three of this article. The social services official shall consider the financial status of the prospective relative guardian or relative guardian only for the purpose of determining the amount of the payments to be made.

7. (a) Kinship guardianship assistance payments shall be made to the relative guardian or guardians until the child's eighteenth birthday or until the child attains twenty-one years of age provided the child consented upon attaining the age of eighteen and is: (i) completing secondary education or a program leading to an equivalent credential; (ii) enrolled in an institution which provides post-secondary or vocational education; (iii) employed for at least eighty hours per month; (iv) participating in a program or activity designed to promote, or remove barriers to, employment; or (v) incapable of any of such activities due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

(b) (i) Notwithstanding paragraph (a) of this subdivision, and except as provided for in paragraph (b) of subdivision five of this section, no kinship guardianship assistance payments may be made pursuant to this title if the social services official determines that the relative guardian is no longer legally responsible for the support of the child, including if the status of the legal guardian is terminated or the child is no longer receiving any support from such guardian. In accordance with the regulations of the office, a relative guardian who has been receiving kinship guardianship assistance payments on behalf of a child under this title must keep the social services official informed, on an annual basis, of any circumstances that would make the relative guardian ineligible for such payments or eligible for payments in a different amount.

(ii) Notwithstanding paragraph (a) of this subdivision, and except as

provided for in paragraph (c) of subdivision five of this section, no kinship guardianship assistance payments may be made pursuant to this title to a successor guardian if the social services official determines that the successor guardian is no longer legally responsible for the support of the child, including if the status of the successor guardian is terminated or the child is no longer receiving any support from such guardian. A successor guardian who has been receiving kinship guardianship assistance payments on behalf of a child under this title must keep the social services official informed, on an annual basis, of any circumstances that would make the successor guardian ineligible for such payments or eligible for payments in a different amount.

8. The placement of the child with the relative guardian or successor guardian and any kinship guardianship assistance payments made on behalf of the child under this section shall be considered never to have been made when determining the eligibility for adoption subsidy payments under title nine of this article of a child in such legal guardianship arrangement.

§ 458-c. Payments for non-recurring guardianship expenses. 1. A social services official shall make payments for non-recurring guardianship expenses incurred by or on behalf of the relatives or successor guardians who have been approved by the social services official to receive kinship guardianship assistance payments, when such expenses are incurred in connection with assuming the guardianship of a foster child or a former foster child in regard to successor guardians. The agreement for the payment of non-recurring guardianship expenses must be reflected in the written agreement set forth in subdivision four of section four hundred fifty-eight-b of this title. In accordance with subdivision two of this section, the payments shall be made by the social services official either to the relative or successor guardian or guardians directly or to an attorney on behalf of the relative or successor guardian or guardians, as applicable, for the allowable amount of non-recurring guardianship expenses incurred in connection with obtaining such guardianship.

2. The amount of the payment made pursuant to this section shall not exceed two thousand dollars for each foster child for whom the relatives, or each former foster child for whom the successor guardians, seek guardianship or permanent guardianship and shall be available only for those expenses that are determined to be eligible for reimbursement by the social services official in accordance with the regulations of the office of children and family services.

3. Payments for non-recurring guardianship expenses made by a social services official pursuant to this section shall be treated as administrative expenditures under title IV-E of the federal social security act and shall be reimbursed by the state accordingly.

4. As used in this section, non-recurring guardianship expenses shall mean reasonable and necessary fees, court costs, attorney fees, and other expenses which are directly related to obtaining legal guardianship of an eligible child and which are not incurred in violation of federal law or the laws of this state or any other state.

§ 458-d. Medical subsidy. 1. Any child with respect to whom federally reimbursable kinship guardianship assistance payments are made under this title is eligible for medical assistance under title XIX of the federal social security act.

2. In addition, a social services official shall make payments for the cost of care, services and supplies payable under the state's program of medical assistance for needy persons provided to any child for whom kinship guardianship assistance payments are being made under this title who is not eligible for medical assistance under subdivision one of this section and for whom the relative or successor guardian is unable to obtain appropriate and affordable medical coverage through any other available means, regardless of whether the child otherwise qualifies for medical assistance for needy persons. Payments pursuant to this subdivision shall be made only with respect to the cost of care, services, and supplies which are not otherwise covered or subject to payment or reimbursement by insurance, medical assistance or other

sources. Payments made pursuant to this subdivision shall only be made if the relative or successor guardian applies to obtain such medical coverage for the child from all available sources, unless the social services official determines that the relative guardian has good cause for not applying for such coverage; which shall include that appropriate coverage is not available or affordable.

3. An application for payments under this section shall be made prior to the issuance of letters of guardianship for the child. An approval of an application for payments under this section shall not be subject to annual review by the social services official, and such approval shall remain in effect for as long as kinship guardianship assistance payments are being made under this title for the child. Applications for such payments shall be accepted prior to the issuance of letters of guardianship of the child, and approval thereof may be granted contingent upon such issuance.

§ 458-e. Independent living services. In accordance with regulations of the office of children and family services, any child who leaves foster care for guardianship with a relative after attaining sixteen years of age for whom kinship guardianship assistance payments are being made under this title shall be eligible:

1. to receive those independent living services that are made available by the social services district to foster children pursuant to section 477 of the federal social security act; and

2. to apply for educational and training vouchers made available pursuant to such section, which will be awarded based on the priorities established by the office of children and family services and the amount of funds made available therefor.

§ 458-f. Fair hearings. 1. Any person aggrieved by the decision of a social services official not to make a payment or payments pursuant to this title or to make such payment or payments in an inadequate or

inappropriate amount or the failure of a social services official to determine an application under this title within thirty days after filing, or the failure of a social services district to agree to a prospective successor guardian being named in an agreement or to approve a prospective successor guardian pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this title, or the decision of a social services district to terminate an agreement pursuant to paragraph (h) of subdivision four of section four hundred fifty-eight-b of this title, may appeal to the office of children and family services, which shall review the case and give such person an opportunity for a fair hearing thereon and render its decision within thirty days. All decisions of the office of children and family services shall be binding upon the social services district involved and shall be complied with by the social services official thereof.

2. The only issues which may be raised in a fair hearing under this section are: (a) whether the social services official has improperly denied an application for payments under this title; (b) whether the social services official has improperly discontinued payments under this title; (c) whether the social services official has determined the amount of the payments made or to be made in violation of the provisions of this title or the regulations of the office of children and family services promulgated hereunder; (d) whether the social services official has failed to determine an application under this title within thirty days; (e) whether the social services official has improperly denied an application to name a prospective successor guardian in the original kinship guardianship assistance agreement for payments pursuant to this title or any amendments thereto; (f) whether a social services official has inappropriately failed to approve a prospective successor guardian; or (g) whether a social services official has inappropriately terminated an agreement for payments under this title.

3. The provisions of subdivisions two and four of section twenty-two of this chapter shall apply to fair hearings held and appeals taken pursuant to this section.

TITLE 11

EDUCATION REFORM PROGRAM

Section 458-l. Education reform program.

§ 458-l. Education reform program. 1. As used in this section:

(a) "eligible person" means an individual who (i) is, or is at risk of being, the subject of a person in need of supervision petition in family court where elements of an eligible offense have been indicated; or (ii) has been arrested for or charged with an eligible offense, or it is otherwise alleged that such person has committed an eligible offense, as that term is defined in paragraph (b) of this subdivision. In determining whether to order an eligible person who has been arrested for or charged with an eligible offense as an adult to participate in the education reform program under this section, a judge must consider, among other factors, prior participation in the program as an adult.

(b) "eligible offense" means a crime or offense committed, or, in the case of a person who is, or is at risk of being the subject of a person in need of supervision petition, conduct engaged in, by an eligible person that involved cyberbullying or the sending or receipt through electronic means of obscenity, as defined in subdivision one of section 235.00 of the penal law, or nudity, as defined in subdivision two of section 235.20 of the penal law, when the sender and the receiver thereof were both under the age of twenty at the time of such communication, but not more than five years apart in age.

(c) "program" means the education reform program developed pursuant to subdivision two of this section.

2. The office of children and family services, hereinafter the "office," shall develop and implement, in consultation with the division of criminal justice services and the state education department, an education reform program to be provided to eligible persons as a diversion program in accordance with section seven hundred thirty-five of the family court act or, as a condition of adjustment pursuant to section 308.1 of the family court act, or as a condition of an order of adjournment in contemplation of dismissal, suspended judgment, discharge

with warning, conditional discharge or probation pursuant to article three or seven of the family court act, as a condition of probation or a conditional discharge pursuant to section 60.37 of the penal law or as a condition of an adjournment in contemplation of dismissal pursuant to section 170.55 of the criminal procedure law, as applicable.

3. The program shall be available in every judicial department in the state; provided that if the office determines that there is not a sufficient number of eligible offenses in a judicial department to mandate the implementation of a program, provisions shall be made for the residents of such judicial department to participate in a program in another judicial department where a program exists if practicable with regard to travel and cost, or to complete the education course online.

4. Such program shall be provided in an age-appropriate manner which focuses on the crime, offense or conduct, shall involve up to eight hours of instruction and shall provide, at a minimum, information concerning:

(a) the legal consequences of and potential penalties for sharing sexually suggestive materials, explicit materials or abusive materials, including sanctions imposed under applicable federal and state statutes;

(b) the non-legal consequences of sharing sexually suggestive materials, explicit materials or abusive materials, including, but not limited to, the possible effect on relationships, loss of educational and employment opportunities, and the potential for being barred or removed from school programs and extracurricular activities;

(c) how the unique characteristics of cyberspace and the internet, including the potential ability of an infinite audience to utilize the internet to search for and replicate materials, can produce long-term and unforeseen consequences for sharing sexually suggestive materials, explicit materials or abusive materials; and

(d) the potential connection between bullying and cyber-bullying and juveniles sharing sexually suggestive materials, explicit materials or abusive materials.

5. The office, in conjunction with the office of court administration, the office of probation and correctional alternatives and the division

of criminal justice services, shall provide annual notice regarding the program to local probation departments, applicable court personnel, county defender offices, organizations or groups assigned to act as attorneys for children, district attorneys, presentment agencies and county attorneys, for the purpose of such information being provided to each eligible person, his or her attorney and his or her parent or guardian where necessary, upon an order that they complete such program. The notice shall include, at a minimum, a short description of the program, when use of the program is authorized by statute, and the means of accessing and completing the program. The office shall maintain information on its website regarding the program, including directions for accessing the program.

6. Within twenty days of the date upon which the eligible person completes the program, the office shall provide such person with a certification that he or she has successfully completed the program and the date the program was completed. The eligible person shall be responsible for completing the program, and providing any necessary proof of completion.

TITLE 12

FAMILY SUPPORT SERVICES PROGRAMS

Section 458-m. Family support services programs.

458-n. Funding for family support services programs.

§ 458-m. Family support services programs. 1. As used in this title, the term "family support services programs" shall mean a program established pursuant to this title to provide community-based supportive services to children and families with the goal of (i) preventing a child from being adjudicated a person in need of supervision and help prevent the out of home placements of such youth or (ii) preventing a petition from being filed under article seven of the family court act, or (iii) reducing future interaction with the juvenile justice or child welfare systems for children under twelve years of age who do not fall under the definition of juvenile delinquent pursuant to subparagraph

(iii) of paragraph (a) of subdivision one of section 301.2 of the family court act and whose behavior, but for their age would bring them within the jurisdiction of the family court pursuant to article three of the family court act.

2. Family support services programs shall provide comprehensive services to such children and their families, either directly or through referrals with partner agencies, including, but not limited to:

- (a) rapid family assessments and screenings;
- (b) crisis intervention;
- (c) family mediation and skills building;
- (d) mental and behavioral health services including cognitive interventions;
- (e) case management;
- (f) respite services;
- (g) education advocacy; and
- (h) other family support services.

3. The services that are provided shall be trauma responsive, family focused, gender-responsive, and evidence based or informed and strengths based and shall be tailored to the individualized needs of the child and family based on the assessments and screenings conducted by such family support services program.

4. Family support services programs shall have the capacity to serve families outside of regular business hours including evenings and weekends.

§ 458-n. Funding for family support services programs. 1.

Notwithstanding any other provision of law to the contrary, to the extent that funds are available for such purpose and specifically appropriated therefor, the office of children and family services shall distribute funding to the highest need municipality which shall mean a county or a city with a population of one million or more to contract with not-for-profit corporations to operate family support services programs in accordance with the provisions of this title and the

specific program model requirements issued by the office.

2. Notwithstanding any other provision of law to the contrary, when determining the highest need municipality pursuant to this subdivision, the office may consider factors that may include, but are not necessarily limited to:

(a) the total amount of available funding and the amount of funding required for family support services programs to meet the objectives outlined in section four hundred fifty-eight-m of this title;

(b) relevant, available statistics regarding each municipality, a group of two or more municipalities that jointly seek to fund and administer a family support services program in accordance with subdivision four of this section which may include, but not necessarily be limited to:

(i) the availability of services within such municipality to prevent or reduce detention or residential placement of youth pursuant to article seven of the family court act; and

(ii) relative to the youth population of such municipality:

(1) the number of petitions filed pursuant to article seven of the family court act; or

(2) the number of placements of youth into residential care or detention pursuant to article seven of the family court act as applicable, over the last five years;

(c) any reported performance outcomes reported to the office pursuant to subdivision three of this section for programs that previously received funding pursuant to this title; or

(d) other appropriate factors as determined by the office.

3. Municipalities receiving funding under this title shall report to the office of children and family services, in the form and manner and at such times as determined by the office, on the performance outcomes of any family support service program located within such municipalities that receives funding under this title.

4. Two or more eligible municipalities within a close geographic within a close geographic proximity to each other may enter into an agreement to jointly seek funding for and jointly administer family

support services programs to service eligible youth and families within such municipalities in accordance with this section. Such agreements shall include provisions for the proportionate cost to be borne by each municipality and for the manner of employment of personnel and may provide that a fiscal officer of one such municipality shall be the custodian of the moneys made available for expenditure for such purposes by all such municipalities and that such fiscal officer may make payments therefrom upon audit of the appropriate auditing body or officer of his or her municipality. In making claims for state aid pursuant to section, each such municipality shall claim for its proportionate share of the total joint expenditures so made. However, where it is provided that there shall be a disbursing municipality, such disbursing municipality shall claim for the total joint program expenditures so made and shall disburse such state aid to each participating municipality based upon the proportionate share of expenditures so made.

5. Notwithstanding the provisions of subdivisions two, three and four of this section, a municipality, consistent with its approved plan for supervision and treatment services for juveniles program, may utilize any funding available to such municipality pursuant to section five hundred twenty-nine-b of the executive law to fund family support services programs pursuant to this title.

TITLE 12-A

DIFFERENTIAL RESPONSE PROGRAMS FOR CHILDREN UNDER TWELVE

Section 458-o. Differential response programs for children under twelve.

§ 458-o. Differential response programs for children under twelve. 1. Each local social services district, upon the approval of the office of children and family services, shall establish a program that implements differential responses to provide services to children under twelve years of age, who do not fall under the definition of juvenile delinquent pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the family court act and whose

behavior, but for their age, would bring them within the jurisdiction of the family court pursuant to article three of the family court act. Such programs shall establish and utilize appropriate assessments and services for youth, in order to help reduce future interaction with the juvenile justice and/or child welfare systems. Such assessments shall be used to determine what, if any, services are needed, and such services shall utilize the least restrictive intervention protocols available. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply only to those cases involving children under twelve years of age, who do not fall under the definition of juvenile delinquent pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the family court act and whose behavior, but for their age, would bring them within the jurisdiction of the family court pursuant to article three of the family court act.

2. To establish a differential response program, each local social services district, as part of their district-wide child welfare services plan, as defined in section four hundred nine-d of this article, shall include a plan to serve the youth described in subdivision one of this section while utilizing certain criteria to be promulgated in regulation by the office of children and family services including but not limited to the following:

(a) the types of assessment to determine whether services are necessary, services and interventions to be provided to children and families included in the differential response program for such children and a description of how the services will be offered. Such services shall include, but not be limited to, those services set forth in section four hundred nine-a of this article and section four hundred fifty-eight-m of this article;

(b) a description of the process to be followed for planning and monitoring the services provided under the differential responses;

(c) a description of how the differential response program will enhance the ability of the district to reduce future interactions with the juvenile justice and child welfare systems, ensure the safety and well-being of such children, and ways to ensure such program addresses adverse impacts on minority communities;

(d) a description of the training that will be provided to district

and any non-district staff to be used in the differential response program including, but not limited to, a description of the training set forth in section eight hundred forty of the executive law for police officers whose main responsibilities are juveniles and the laws pertaining thereto; and

(e) a description of any additional funding that may be utilized to enhance the differential response program.

3. (a) All records created as part of the differential response program for children described in subdivision one of this section shall include, but not be limited to, the initial and any subsequent reasons why a differential response is recommended for a child, documentation of all services offered and accepted by such child and their family, the plan for supportive services for the child and their family, and all evaluations and assessments of the child's progress.

(b) Records created under the differential response program for the children described in subdivision one of this section shall be maintained for five years after a child is referred to a local social services district for intervention as described in this section or until the child reaches the age of twelve, whichever is sooner.

(c) All reports assigned to, and records created under, the differential response program, including but not limited to reports made or written as well as any other information obtained or photographs taken concerning such reports or records shall be confidential, shall be made available only to an entity listed below which has been involved in the particular youth's service delivery, and shall not be redisclosed, except as authorized pursuant to subparagraph (vi) of this paragraph, utilizing non-identifying aggregated information. Such entities shall include:

(i) staff of the office of children and family services and persons designated by the office of children and family services;

(ii) the social services district responsible for the differential response program for children described in subdivision one of this section;

(iii) a community-based agency that has a contract with the social services district to carry out activities for the district under the differential response program;

(iv) a provider of services under the differential response program;
(v) the child, or to their parent or legal guardian, and the attorney for the child; and
(vi) the office of children and family services and social services districts for the sole purpose of preparing the report required pursuant to subdivision five of this section.

4. Expenditures by a social services district pursuant to this section shall be reimbursable from the annual appropriations available for social services district expenditures for child welfare services which shall include, but not be limited to, preventive services provided pursuant to section four hundred nine-a of this article, funding for family support services programs as set forth in section four hundred fifty-eight-n of this article and supervision and treatment services for juveniles program as set forth in section five hundred twenty-nine-b of the executive law. Nothing shall preclude a social services district from seeking private funds for support of their differential response programs.

5. The office of children and family services shall report on the differential response programs established pursuant to this section, including the local social services district's efforts to reduce future interactions with the juvenile justice and child welfare systems, how the local social services districts are ensuring the safety and well-being of such children, and how the program is addressing adverse impacts on minority communities, on an annual basis beginning one year from the start of every local social services district's differential response program.

ARTICLE 6-A

DOMESTIC VIOLENCE PREVENTION ACT

Section 459-a. Definitions.

459-b. Residential services for victims of domestic violence.

459-c. Non-residential services for victims of domestic violence.

459-d. Reporting requirements.

459-e. Technical assistance.

459-f. Payment for services.

459-g. Cooperation of an abuser not required as a condition of eligibility for benefits or services.

459-h. Confidentiality.

§ 459-a. Definitions. As used in this article: 1. "Victim of domestic violence" means any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, strangulation, identity theft, grand larceny or coercion; and

(i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and

(ii) such act or acts are or are alleged to have been committed by a family or household member.

2. "Family or household members" mean the following individuals:

(a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons are married or have lived together at any time;

(e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household;

(f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered

in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; or

(g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.

3. "Parent" means a natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

4. "Residential program for victims of domestic violence" means any residential care program certified by the department and operated by a not-for-profit organization in accordance with the regulations of the department for the purpose of providing emergency shelter, services and care to victims of domestic violence. Residential programs for victims of domestic violence shall include, but shall not be limited to:

(a) "Domestic violence shelters", which shall include any residential care facility organized for the exclusive purpose of providing emergency shelter, services and care to victims of domestic violence and their minor children, if any;

(b) "Domestic violence programs" which shall include any facility which otherwise meets or would meet the requirements of paragraph (a) of this subdivision, except that victims of domestic violence and their minor children, if any, constitute at least seventy percent of the clientele of such program; and

(c) "Safe home networks" which shall include any organized network of private homes offering emergency shelter and services to victims of domestic violence and their minor children, if any. Such network shall be coordinated by a not-for-profit organization.

5. "Non-residential program for victims of domestic violence" means any program operated by a not-for-profit organization, for the purpose of providing non-residential services to victims of domestic violence,

including, but not limited to, information and referral services, advocacy, counseling, and community education and outreach activities and providing or arranging for hotline services. Victims of domestic violence and their children, if any, shall constitute at least seventy percent of the clientele of such programs.

§ 459-b. Residential services for victims of domestic violence. In accordance with section one hundred thirty-one-u of this chapter and the regulations of the office of children and family services, a social services district shall offer and provide necessary and available emergency shelter and services for up to ninety days at a residential program for victims of domestic violence to a victim of domestic violence who was residing in the social services district at the time of the alleged domestic violence whether or not such victim is eligible for public assistance. Two forty-five day extensions of necessary and available emergency shelter may be granted beyond the maximum length of stay at a residential program for victims of domestic violence for residents who continue to be in need of emergency services and temporary shelter. If the victim of domestic violence has a service animal as such term is defined in section one hundred twenty-three-b of the agriculture and markets law, or therapy dog as such term is defined in section one hundred eight of the agriculture and markets law, respectively, such service animal or therapy dog shall be allowed to accompany the victim at the residential program authorized pursuant to this section, so long as such accompaniment would not create an undue burden as defined by section two hundred ninety-six of the executive law.

Where such accompaniment would constitute an undue burden, the residential program shall make reasonable efforts to facilitate placement of such animal at an off-site animal care facility or if reasonable efforts fail, provide referral to one or more off-site animal care facilities. Such off-site animal care may include, but not be limited to, boarding at a veterinary hospital or under the auspices of a duly incorporated humane society, or duly incorporated animal protection association approved for such purpose by the department of agriculture and markets.

Nothing in this section shall be construed to limit any rights or obligations provided pursuant to federal or state law, including but not limited to providing reasonable accommodations for individuals with disabilities.

§ 459-c. Non-residential services for victims of domestic violence. 1. In accordance with the provisions of this section and the regulations of the department, a social services district shall offer and provide non-residential services including but not limited to, information and referral services, advocacy, counseling, community education and outreach activities, and hotline services, to a victim of domestic violence whether or not the victim is eligible for public assistance. A social services district may provide such non-residential services directly or may purchase such services from a not-for-profit organization operating a residential program and/or a non-residential program for victims of domestic violence.

2. To the extent that funds are appropriated expressly therefore and a social services district has exhausted its allocation under title XX of the federal social security act, state reimbursement shall be available for fifty percent of the expenditures made by a social services district for those non-residential services provided to victims of domestic violence which are included in the social services district's multi-year consolidated services plans and annual implementation reports approved by the department pursuant to section thirty-four-a of this chapter.

§ 459-d. Reporting requirements. The commissioner shall submit a report prior to December fifteenth, nineteen hundred eighty-eight and annually thereafter to the governor and the legislature regarding the implementation of this article. Such report shall include:

1. the number of persons estimated to have been assisted in programs covered by this article;

2. the number of persons estimated to have been denied shelter and/or services;
3. the amount of public and private funds for approved programs by service type;
4. the amount of funds used for the administration and staffing of such programs;
5. the occupancy rate and length of stay by residential program;
6. the name and description of new programs developed by service type;
7. the name and description of programs in danger of closing that received funds and the status of such programs;
8. the name and description of programs that closed during the reporting year and the reason for such closure;
9. the number of individuals who requested and received transitional services and the effect of providing such services to victims of domestic violence and their families;
10. the name and description of programs which received technical assistance and the effect of such assistance;
11. a schedule showing the approved daily rates of reimbursement payable to residential programs for victims of domestic violence pursuant to section one hundred thirty-one-u of this chapter; and
12. all such other matters as may be necessary to inform the governor and the legislature regarding the implementation and effectiveness of programs covered by this article.

§ 459-e. Technical assistance. To the extent that funds are available, the department shall arrange for or provide technical assistance to

residential and non-residential programs for victims of domestic violence. Technical assistance shall include, but shall not be limited to, budgeting techniques, fund raising and program management.

§ 459-f. Payment for services. Payments by a social services district to a residential program for victims of domestic violence for the costs of emergency shelter and services provided to a victim of domestic violence at the daily reimbursement rate determined by the department in accordance with section one hundred thirty-one-u of this chapter shall be reduced by the sum of any other reimbursement available for such costs.

§ 459-g. Cooperation of an abuser not required as a condition of eligibility for benefits or services. 1. Neither the state, a political subdivision of the state, a public authority, nor any employee or agent thereof shall, in any way, condition eligibility or receipt of services or benefits by a victim of domestic violence, as defined in this article, by requiring the victim to contact the person who perpetrated such domestic violence or by requiring the person who perpetrated such domestic violence to complete any forms, provide any information, appear in person, or cooperate in any other manner as a part of such victim's application for or process of certification for continued receipt of any services or benefits in this state.

2. Although such information or cooperation shall not be required as a condition of eligibility for or receipt of such services or benefits, in the event the governmental entity, employee or agent seeks any such information or cooperation, such entity, employee or agent shall, if informed consent is given in writing by such victim of domestic violence, provide an intermediary to make such contact in a manner that protects the privacy, confidentiality and current location of the victim. In the event the governmental entity, employee or agent seeks any such information or cooperation to comply with any federal law, regulation or mandate, such entity, employee or agent shall so advise the victim of domestic violence and provide an intermediary to make such

contact on behalf of the victim in a manner that will protect the privacy, confidentiality and current location of the victim.

§ 459-h. Confidentiality. 1. The street address of any residential program for victims of domestic violence applying for funding pursuant to this article shall be confidential and may be disclosed only to persons designated by rules and regulations of the department.

2. All information related to the general location or specific street address of a structure anticipated to house a residential program for victims of domestic violence that is contained in any application submitted to a state or local agency or any instrumentality thereof prior to the filing of an application for funding pursuant to this article shall be kept confidential by those entities and their employees and may be disclosed only to persons designated by the rules and regulations of the department.

ARTICLE 7

RESIDENTIAL CARE PROGRAMS FOR ADULTS AND CHILDREN

- Title 1. General provisions (§§ 460--460-h).
2. Residential programs for adults (§§ 461--461-u).
 3. Residential programs for children (§§ 462--462-b).
 4. Registry of community residential facilities (§§ 463--463-b).

TITLE 1

GENERAL PROVISIONS

- Section 460. Declaration of policy and statement of purpose.
- 460-a. Certificates of incorporation.
 - 460-b. Operating certificate.
 - 460-c. Inspection and supervision.
 - 460-d. Enforcement powers.
 - 460-e. Records and reports; confidentiality; information.
 - 460-f. Penalties.
 - 460-g. Construction.

460-h. Review of criminal history information concerning prospective employees, consultants, assistants and volunteers of publicly-funded emergency shelters for families with children.

§ 460. Declaration of policy and statement of purpose. Residential care programs for adults and children of the highest quality, efficiently produced and properly utilized at a reasonable cost, are a matter of vital concern to the people of this state. In order to more effectively protect and assure the life, health, safety and comfort of adults and children who must be cared for away from their own homes, the department of social services acting directly or through social services districts, and with the cooperation of other state agencies, shall have the comprehensive responsibility for the development and administration of programs, standards and methods of operation, and all other matters of state policy, with respect to residential care programs for children and adults and all facilities and agencies, whether public or private, which are subject to the provisions of this article. For the purposes of this article, with respect to residential care programs for children, the term "department" shall mean the office of children and family services and with respect to residential care programs for adults, the term shall mean the office of children and family services in relation to family type homes for adults and residential programs for victims of domestic violence, the office of temporary and disability assistance in relation to shelters for adults and shelters for families; and the department of health in relation to all other residential care programs for adults.

§ 460-a. Certificates of incorporation. 1. Unless the written approval of the department shall have been endorsed on or annexed to a certificate of incorporation, no such certificate shall hereafter be filed which includes among its corporate purposes the care of destitute, delinquent, abandoned, neglected or dependent children; the establishment or operation of any aged care accommodation, as defined in the private housing finance law, or adult care facility; the placing-out

or boarding-out of children, as defined in this chapter; the establishment or operation of a home or shelter for unmarried mothers or a residential program for victims of domestic violence, as defined in subdivision four of section four hundred fifty-nine-a of this chapter; or the solicitation of contributions for any such purpose or purposes, provided, however, that the approval of the department shall not be required for filing of a certificate of incorporation which is restricted in its statement of corporate purposes to the establishment or operation of a facility for which an operating certificate is required by article twenty-three, nineteen, thirty-one or thirty-two of the mental hygiene law, or to the establishment or operation of a hospital, residential health care facility, or a home health agency, as those terms are defined in article twenty-eight of the public health law.

2. The department shall promulgate regulations establishing the procedure for submitting certificates of incorporation for approval and specifying the documentation to be submitted in connection with such approval. The department shall approve or disapprove a certificate of incorporation solely on the basis of information submitted pursuant to regulations. The department shall approve or disapprove a certificate of incorporation by indicating its approval by endorsement of the certificate of incorporation or its disapproval by giving written notice thereof, which notice shall state the reasons for disapproval. A certificate of incorporation not acted upon within sixty days of the receipt of all information and documentation required by department regulations shall be deemed to be disapproved.

3. Where a corporation engages in, or holds itself out as being authorized to engage in, activities described in this section without having obtained requisite approvals, the department may institute and maintain an action in the supreme court through the attorney general to procure a judgement dissolving and vacating or annulling the certificate of incorporation of any such corporation.

§ 460-b. Operating certificate. 1. No facility subject to

inspection and supervision by the department, except a facility operated by a state department or agency, or a facility which pursuant to law is licensed or certified to operate by a state department or agency or by an authorized agency as such term is defined in section three hundred seventy-one of this chapter, shall be operated unless it shall possess a valid operating certificate issued pursuant to this article by the department, which certificate shall specify who the operator of the facility shall be, the kind or kinds of care and services such facility is authorized to provide, the capacity of the facility, the location of the facility and, except in the case of a facility operated by an authorized agency as such term is defined in paragraph (a) of subdivision ten of section three hundred seventy-one of this chapter, the duration of the period of its validity. The department shall by regulation specify the manner in which the public shall be given notice of the existence of such operating certificate.

2. Application for an operating certificate pursuant to this article shall be made upon forms prescribed by the department and in accordance with procedures established by regulations of the department. The application shall contain the name of the facility, the kind or kinds of care and services to be provided, the location and physical description of the facility, and such other information as the department may require. The application shall be approved and an operating certificate shall be issued when it is established to the satisfaction of the department that the facility meets, and will be operated in accordance with, the requirements of this article, the regulations of the department and all other applicable provisions of law including requirements as to the premises, equipment, personnel, care and services, rules, by-laws and administrative practices.

3. Each facility required to obtain an operating certificate pursuant to this section shall be required, as a condition of qualifying for or remaining qualified for such certificate, to demonstrate to the satisfaction of the department that it has taken all reasonable steps to assure that residents entitled to a personal allowance pursuant to section one hundred thirty-one-o of this chapter have in fact received the full personal benefit of such allowance, and that proper accounting

procedures have been complied with.

§ 460-c. Inspection and supervision. 1. Excepting state institutions for the education and support of the blind, the deaf and the dumb, facilities subject to the approval, visitation and inspection of the state department of mental hygiene or the state commission of correction, facilities operated by or under the supervision of the division for youth and facilities subject to the supervision of the department of health pursuant to article twenty-eight of the public health law, the department shall inspect and maintain supervision over all public and private facilities or agencies whether state, county, municipal, incorporated or not incorporated which are in receipt of public funds, which are of a charitable, eleemosynary, correctional or reformatory character, including facilities or agencies exercising custody of dependent, neglected, abused, maltreated, abandoned or delinquent children, agencies engaged in the placing-out or boarding-out of children as defined in section three hundred seventy-one of this chapter, homes or shelters for unmarried mothers, residential programs for victims of domestic violence as defined in subdivision five of section four hundred fifty-nine-a of this chapter and adult care facilities.

2. Upon inspection of any facility subject to the inspection and supervision of the department pursuant to subdivision one of this section, inquiry may be made to ascertain:

(a) whether the objectives of the facility or agency are being accomplished;

(b) whether all applicable provisions of law and regulations of the department are being fully complied with;

(c) the general management and financial condition of the facility, including any sources of public funds received;

(d) its methods of and equipment for scholastic and career education, and whether the same are best adapted to the needs of the residents and beneficiaries;

(e) its methods of administration;

(f) its methods of and equipment for providing care, medical

attention, treatment and discipline of its residents and beneficiaries, and whether the same are best adapted to the needs of the residents and beneficiaries;

(g) the qualifications and general conduct of its officers and employees;

(h) the condition of its grounds, buildings and other property; and

(i) any other matter connected with or pertaining to its usefulness and good management or to the interests of its residents or beneficiaries.

2-a. Special procedures relating to abuse and neglect of vulnerable persons. (a) If the report of an investigation of abuse or neglect is substantiated in accordance with article eleven of this chapter, the director or operator of a residential facility or program shall submit to the department, within ten business days of receipt of notice of the substantiated report, a written plan of prevention and remediation to be taken with respect to the subject of such report to protect the continued health, safety and welfare of the service recipients and provide for the prevention of future acts of abuse or neglect. The department shall approve or disapprove such plan and specify necessary revisions within ten days of its receipt and shall monitor its implementation pursuant to the provisions of this chapter.

(b) In the event an investigation of a report of alleged abuse or neglect determines that a preponderance of evidence of abuse or neglect exists and such abuse or neglect may be attributed in whole or in part to noncompliance by the facility or program with provisions of this chapter or regulations of the department applicable to the operation of such residential facility or program, the director or operator of such facility or program shall, in consultation with officials of the department responsible for the approval of operating certificates and for monitoring the provision of protective services to service recipients, develop a plan of prevention and remediation which shall be submitted to and approved by the department in accordance with time limits established by regulations of the department. Implementation of such plan shall be jointly monitored by officials of the department responsible for the approval of operating certificates and for monitoring the provision of protective services to service recipients.

In reviewing the continuing qualification of a residential facility or program for an operating certificate, the department shall evaluate such facility's or program's compliance with plans of prevention and remediation developed and implemented pursuant to this section.

(c) Development and implementation of plans pursuant to this section shall, to the extent possible, be coordinated with remediation plans required by local social services districts.

3. With respect to any corporation heretofore or hereafter formed by a special act or under a general law, or any unincorporated organization, institution, facility or agency, which actually engages in any of the aforementioned works but which is not in receipt of public funds, the department is authorized to inspect and supervise with respect to the health, safety, treatment and training of its residents, or of the children under its custody.

4. The commissioner or any official so authorized by him may conduct any inquiry pursuant to the authority of section thirty-four of this chapter, in relation to any matter arising out of an inspection performed pursuant to this title. Any officer or duly authorized employee shall have full access to the grounds, buildings, books and papers relating to any such facility or agency and may require from the officers and persons in charge thereof any information he may deem necessary in the discharge of his duties. The department may establish rules according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner.

5. Any officer, superintendent or employee of any such facility or agency who shall intentionally refuse to admit any officer or inspector of the department for the purpose of inspection, or shall intentionally refuse or fail to furnish the information required by the department or any officer or inspector, shall be guilty of a misdemeanor.

6. The rights and powers conferred by this section may be enforced by an order of the supreme court after notice and hearing, or by indictment by the grand jury of the county, or both.

7. The inspection and supervision powers and duties of the commissioner as established by this section may, in the case of any family type home for adults with a capacity of four or less, be delegated in whole or in part, to the local commissioner of the social services district in which such facility is located, and such local commissioner shall make reports regarding such facility in such form and manner and at such time as the department regulations may require.

§ 460-d. Enforcement powers. 1. The commissioner or any person designated by the commissioner may undertake an investigation of the affairs and management of any facility subject to the inspection and supervision provision of this article, or of any person, corporation, society, association or organization which operates or holds itself out as being authorized to operate any such facility, or of the conduct of any officers or employers of any such facility. Persons empowered by the commissioner to conduct any such investigation are hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths and to examine persons under oath, and to exercise the same powers in respect to the conduct of such an investigation as belong to referees appointed by the supreme court.

2. If it shall appear after such investigation that the residents of the facility are cruelly, negligently or improperly treated, or that inadequate provision is made for their sustenance, clothing, care, supervision or other condition necessary for their comfort and well-being, the department may issue an order in the name of the people, and under the official seal of the state, directing the appropriate officers or managers of such facility to modify such treatment or provide such other remedy as may be specified therein. Before any such order is issued, it must be approved by a justice of the supreme court, after such notice as he may prescribe and after an opportunity to be heard, and any person to whom such an order is directed who shall intentionally fail or refuse to obey its terms shall be guilty of a misdemeanor.

3. The attorney general and every district attorney shall upon request

of the department furnish such legal assistance, counsel or advice as the department may require in the discharge of its duties.

4. (a) The operating certificate of any facility may be revoked, suspended or limited upon a determination by the department that the facility has failed to comply with the requirements of state or local laws or regulations applicable to the operation of such facility.

(b) No operating certificate shall be revoked, suspended or limited without a hearing held in accordance with procedures established by department regulations, which procedures shall require that notice of the time and place of the hearing, and notice of the charges, shall be served in person or by certified mail addressed to the facility at least thirty days prior to the date of the hearing. A written answer to the charges may be filed with the department not less than ten business days prior to the date of the hearing. An operating certificate may, nevertheless, be suspended or limited without a hearing for a period not in excess of sixty days, upon written notice to the facility following a finding by the department that the public health, or an individual's health, safety or welfare, are in imminent danger.

(c) Any order or determination to suspend any operating certificate will specify the conditions of the suspension. These conditions may include but need not be limited to the following:

(i) if required for the protection of the health, safety or welfare of the residents, the immediate transfer of some or all residents to other appropriate facilities or to the custody of their legal guardians, if any;

(ii) the appointment of a temporary operator to operate the facility during the term of the suspension;

(iii) the immediate transfer of all records concerning the operation of the facility, including resident records, facility business records and any other records related to the operation of the facility to the department immediately. The department shall control the records for the term of the suspension;

(iv) the operator or operators of the facility shall be barred from access to the facility during the term of the suspension; or

(v) the requirement that the operator, if replaced by a temporary operator, provide the temporary operator with any funds received by the

operator for the operation of the facility.

(d) Any order or determination to limit an operating certificate shall specify the manner in which the operating certificate is to be limited. An operating certificate may be found subject to one or more of the following limitations:

(i) a limitation on the period of time for which such certificate remains effective, contingent on a determination that specified violations have been corrected or specified conditions have been met;

(ii) a limitation on the number of persons for which such facility is authorized to provide care; or

(iii) a prohibition against the admission of new residents after a specified date.

(e) Any order or determination of revocation, suspension or limitation of the operating certificate shall be subject to judicial review in accordance with article seventy-eight of the civil practice law and rules.

5. In addition to or as an alternative to any power which the department may exercise under this article, the supreme court may grant equitable relief against violations or threatened violations of this article or of the regulations of the department by any facility subject to the inspection and supervision of the department. The attorney general may seek such equitable relief, in the name of the people, upon the request of the department. Service in such an action shall state the nature of the violation and shall be accomplished in the manner prescribed by the civil practice law and rules; provided, however, that an ex parte order for equitable relief may issue, notwithstanding the civil practice law and rules, if the court finds, on motion and affidavit, that such violation may reasonably be expected to result in imminent danger to the public health or to the health, safety or welfare of any individual in a facility subject to the department's inspection and supervision. The court, after a hearing, may make an order granting such equitable relief as it may deem necessary, including, but not limited to a preliminary injunction or a permanent injunction, enjoining a facility from admitting new residents, directing the department and such facility to arrange for the transfer of residents to other facilities, appointment of a temporary or permanent receiver for the

protection of the public health or the health, safety and welfare of any individual in such facility, or directing a facility operator to transfer all records concerning the operation of the facility, including resident records, facility business records and any other records related to the operation of the facility to the department immediately. The people shall not be required to post security or bond.

6. Orders prohibiting placing-out or boarding-out of children or orders of removal of any child may be issued and enforced in accordance with section three hundred eighty-five of this chapter.

7. (a) The department shall adopt regulations establishing civil penalties of up to one thousand dollars per day to be assessed against all adult care facilities except facilities operated by a social services district for violations of (i) regulations of the department pertaining to the care of residents in such facilities, (ii) paragraph (a) of subdivision three of section four hundred sixty-one-a of this chapter, or (iii) an order issued pursuant to subdivision eight of this section. The regulations shall specify the violations subject to penalty and the amount of the penalty to be assessed in connection with each such violation and shall specify that only civil penalties of up to one thousand dollars per day per violation shall be assessed pursuant to this paragraph against an adult care facility found responsible for an act of retaliation or reprisal against any resident, employee, or other person for having filed a complaint with or having provided information to any long term care patient ombudsman functioning in accordance with section five hundred forty-four or five hundred forty-five of the executive law.

(b) (1) In addition to any other civil or criminal penalty provided by law, the department shall have the power to assess civil penalties in accordance with its regulations adopted pursuant to paragraph (a) of this subdivision, after a hearing conducted in accordance with the procedures established by regulations of the department. Such procedures shall require that notice of the time and place of the hearing, together with a statement of charges of violations, shall be served in person or by certified mail addressed to the facility at least thirty days prior to the date of the hearing. The statement of charges of violations shall

set forth the existence of the violations, the amount of penalty for which it may become liable and the steps which must be taken to rectify the violation and, where applicable, a statement that the department contends that a penalty may be imposed under this paragraph regardless of rectification. An answer to the charges of violations, in writing, shall be filed with the department, not less than ten days prior to the date of hearing. The answer shall notify the department of the facility's position with respect to each of the charges and shall include all matters which if not disclosed in the answer would be likely to take the department by surprise. The commissioner, or a member of his staff who is designated and authorized by him to hold such hearing, may in his discretion allow the facility to prove any matter not included in the answer. Where the facility satisfactorily demonstrates that it either had rectified the violations within thirty days of receiving written notification of the results of the inspection pursuant to section four hundred sixty-one-a of this chapter, or had submitted within thirty days an acceptable plan for rectification and was rectifying the violations in accordance with the steps and within the additional periods of time as accepted by the department in such plan, no penalty shall be imposed, except as provided in subparagraph two of this paragraph.

(2) Rectification shall not preclude the assessment of a penalty if the department establishes at a hearing that a particular violation, although corrected, endangered or resulted in harm to any resident as the result of:

(i) the total or substantial failure of the facility's fire detection or prevention systems, or emergency evacuation procedures prescribed by department safety standard regulations;

(ii) the retention of any resident who has been evaluated by the resident's physician as being medically or mentally unsuited for care in the facility or as requiring placement in a hospital or residential health care facility and for whom the operator is not making persistent efforts to secure appropriate placement;

(iii) the failure in systemic practices and procedures;

(iv) the failure of the operator to take actions as required by department regulations in the event of a resident's illness or accident;

(v) the failure of the operator to provide at all times supervision of

residents by numbers of staff at least equivalent to the night staffing requirement set forth in department regulations; or

(vi) unreasonable threats of retaliation or taking reprisals, including but not limited to unreasonable threats of eviction or hospitalization against any resident, employee or other person who makes a complaint concerning the operation of an adult care facility, participates in the investigation of a complaint or is the subject of an action identified in a complaint.

The department shall specify in its regulations those regulations to which this subparagraph two shall apply.

(3) In assessing penalties pursuant to this paragraph, the department shall consider promptness of rectification, delay occasioned by the department, and the specific circumstances of the violations as mitigating factors.

(c) Upon the request of the department, the attorney general may commence an action in any court of competent jurisdiction against any facility subject to the provisions of this section, and against any person or corporation operating such facility, for the recovery of any penalty assessed by the department in accordance with the provisions of this subdivision.

(d) Any such penalty assessed by the department may be released or compromised by the department before the matter has been referred to the attorney general, and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the department.

8. Whenever the commissioner, after investigation, finds that any person, agency or facility subject to this article is causing, engaging in or maintaining a condition or activity which constitutes a danger to the physical or mental health of the residents of a facility subject to the inspection and supervision of the department, and that it therefore appears to be prejudicial to the interests of such residents to delay action for thirty days until an opportunity for a hearing can be provided in accordance with the provisions of this section, the commissioner shall order the person, agency or facility by written

notice, setting forth the basis for such finding, to discontinue such dangerous condition or activity or take certain action immediately or within a specified period of less than thirty days. The commissioner shall within thirty days of issuance of the order provide the person, agency or facility an opportunity to be heard and to present any proof that such condition or activity does not constitute a danger to the health of such residents.

9. (a) The department shall have authority to impose a civil penalty not exceeding one thousand dollars per day against, and to issue an order requiring the closing of, after notice and opportunity to be heard, any facility which does not possess a valid operating certificate issued by the department and is an adult care facility subject to the provisions of this article and the regulations of the department. A hearing shall be conducted in accordance with procedures established by department regulations which procedures shall require that notice of the determination that the facility is an adult care facility and the reasons for such determination and notice of the time and place of the hearing be served in person on the operator, owner or prime lessor, if any, or by certified mail, return receipt requested, addressed to such person and received at least twenty days prior to the date of the hearing. If such operator, owner or prime lessor, if any, is not known to the department, then service may be made by posting a copy thereof in a conspicuous place within the facility or by sending a copy thereof by certified mail, return receipt requested, addressed to the facility. A written answer to the notice of violation may be filed with the department not less than five days prior to the date of the hearing. Demonstration by the facility that it possessed an operating certificate issued pursuant to this article, article twenty-eight of the public health law or article sixteen, twenty-three, thirty-one or thirty-two of the mental hygiene law at the time the hearing was commenced shall constitute a complete defense to any charges made pursuant to this subdivision.

(b) The penalty authorized by this section shall begin to run thirty days after the department provides the operator, in writing, with a summary of the inspection of the facility by which the department determined that he or she is operating an uncertified adult care

facility. The submission of an application by the operator for an operating certificate for the facility shall not act as a bar to the imposition of a penalty against the operator.

(c) (i) For the purposes of assessing the applicability of this article and the regulations of the department, the department shall be authorized to inspect any facility which reasonably appears to the department to be subject to the provisions of this article and to assess the needs of the residents of such facility pursuant to the provisions of section four hundred sixty-c of this title.

(ii) At the time that a representative of the department appears at the facility for purposes of conducting such inspection, the representative shall inform the operator, administrator or other person in charge that the inspection will be conducted unless such person objects to the inspection and that if such person does object the department, pursuant to the provisions of subparagraph (iii) of this paragraph, shall be authorized to request the attorney general to apply to the court for an order granting the department access to the facility.

(iii) If the department is not permitted access to such facility by the operator, administrator or other person in charge thereof, the attorney general, upon the request of the department, shall be authorized to apply, without notice to the operator, administrator or chairman of the board of directors of a not-for-profit facility, to the supreme court in the county in which the facility is located for an order granting the department access to such facility. The court may grant such an order if it determines, based on evidence presented by the attorney general, that there is reasonable cause to believe that such facility is an adult care facility which does not possess a valid operating certificate issued by the department.

(d) Upon the request of the department, the attorney general may commence an action in any court of competent jurisdiction against any facility subject to the provisions of this subdivision, and against any person or corporation operating such facility, for the recovery of any penalty assessed by the department in accordance with the provisions of this subdivision.

(e) Any penalty assessed by the department pursuant to this subdivision may be released or compromised by the department before the

matter has been referred to the attorney general and where such matter has been referred to the attorney general, any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the attorney general with the consent of the department.

10. By March first, nineteen hundred ninety-five and annually thereafter, the department shall submit a report to the governor and the legislature on the regulation of adult homes and residences for adults. Such report shall include both a narrative and statistical summary detailing the results of inspections and enforcement actions of adult homes and residences for adults. The report shall also include results of audits of financial conditions and practices of a selected sample of adult homes and residences of adults and recommendations for legislative action relating to the need for changes in statute.

11. On or before issuance by the department to an adult care facility operator of official written notice of: the proposed revocation, suspension or denial of the operator's operating certificate; the limitation of the operating certificate with respect to new admissions; the issuance of a department order or commissioner's order; the seeking of equitable relief pursuant to this section; the proposed assessment of civil penalties for violations of the provisions of subparagraph two of paragraph (b) of subdivision seven of this section or placement on the "do not refer list" pursuant to subdivision fifteen of this section, written notice also shall be given to the appropriate office of the department of mental hygiene, department of corrections and community supervision and local social services districts, and provided further that the department of health shall notify hospitals in the locality in which such facility is located that such notice has been issued. Upon resolution of such enforcement action the department shall notify the appropriate office of the department of mental hygiene, department of corrections and community supervision, local social services districts and hospitals.

12. Social services districts and other local government entities established pursuant to this chapter shall be prohibited from making

referrals for admissions to adult care facilities that have received official written notice regarding: the proposed revocation, suspension or denial of the operator's operating certificate; the limitation of the operating certificate with respect to new admissions; the issuance of department order or commissioner's orders; the seeking of equitable relief pursuant to this section; the proposed assessment of civil penalties for violations of the provisions of subparagraph two of paragraph (b) of subdivision seven of this section; or the facility's placement on the "do not refer list" pursuant to subdivision fifteen of this section.

* 13. The department shall notify the department of health of any enforcement action pursuant to this section taken against an operator of an adult home or enriched housing program which has been licensed by the department of health as a limited home care services agency pursuant to section thirty-six hundred five of the public health law.

* NB Expires June 30, 2027

* 14. If the department receives notice from the department of health that an action has been taken against an operator of a limited home care services agency, pursuant to section thirty-six hundred five-a of the public health law, the department shall review the delivery of services provided by the certified operator of an adult home or enriched housing program to determine whether such operator is meeting all applicable regulations and standards.

* NB Expires June 30, 2027

15. The department of health shall maintain, on its website, a list of all adult homes, enriched housing programs, residences for adults and assisted living programs that have received written notice of: enforcement action based on a violation of an applicable law or regulation that creates an endangerment of resident health or safety pursuant to subparagraph two of paragraph (b) of subdivision seven of this section or a pending enforcement action against a facility's operating certificate or a determination that the facility is required to be certified as an adult home, enriched housing program or residence for adults. Provided however, if a facility contends, in writing, that the violation resulting in the facility being included on the "do not refer list" has been corrected, the department shall, within thirty

days, reinspect the facility, and if the department determines that the violation has been corrected, the facility shall be immediately removed from the list. This list shall be known as the "do not refer" list and shall be promptly updated to reflect any of the above violations and the reopening of admissions in any adult care facility in which the enforcement action for which they were added to the list has been resolved.

16. Any operator or controlling person of an adult care facility, as defined in clause two of subparagraph (x) of paragraph (a) of subdivision four of section four hundred sixty-one-e of this article shall be prohibited from applying to the department of health or to any other agency of this state for an operating certificate or approval to operate an alternate type of facility during the period in which such certificate has been revoked, suspended or limited.

17. The department of health shall direct the temporary operator to, and the temporary operator shall, provide written notification to residents of all adult homes, enriched housing programs, residences for adults and assisted living programs where a temporary operator has been appointed pursuant to subdivision four of this section.

§ 460-e. Records and reports; confidentiality; information. 1. The department shall require, collect and maintain such information, records or reports as it may determine to be necessary to further the purpose of this article. Organizations and institutions subject to the inspection and supervision of the department shall provide such information and records in such form and at such times as the department shall determine.

2. The department may request from any other state department or state or local agency, including the department of mental hygiene, the division for youth and the board of social welfare, and such other department or agency shall furnish, such information as the department may require for the proper performance of its duties under this article. The department shall safeguard the confidentiality of information

received from such departments and agencies. Such other state departments or state agencies may request from the department, and the department shall furnish, such information as such other department or agency may require for the proper discharge of its duties. Such departments and agencies shall safeguard the confidentiality of such information, records, and reports in the same manner as the department in accordance with the provisions of sections one hundred thirty-six, four hundred forty-four and four hundred sixty-one-e of this chapter or as otherwise authorized by law.

3. Officers or employees of the department shall maintain the confidentiality of facts and information obtained as the result of any inspection or investigation of a facility subject to inspection and supervision under this article, in the same manner as information received under subdivision two of this section.

4. All officers of facilities or agencies subject to the inspection of the department shall furnish to the department, on forms provided by the department, such information and statistics as it may require, within sixty days from the expiration of the state fiscal year or such other fiscal period as may be designated by the department.

§ 460-f. Penalties. Any person who intentionally violates any provision of this article or regulations of the department relating to certificates of incorporation, operating certificates or confidentiality of information shall be guilty of a class A misdemeanor.

§ 460-g. Construction. The provisions of this article shall not be deemed or construed to alter, amend, repeal or otherwise modify the provisions of article nineteen-G of the executive law, relating to secure and non-secure detention facilities, article nineteen-H of the executive law relating to residential facilities operating as approved runaway programs and transitional independent living support programs, or articles thirteen and eighty-one of the mental hygiene law, relating to facilities for the mentally disabled or drug dependent persons.

§ 460-h. Review of criminal history information concerning prospective employees, consultants, assistants and volunteers of publicly-funded emergency shelters for families with children. 1. Every provider of services to publicly-funded emergency shelters for families with children, as such phrase is defined in subdivision nine of section four hundred twelve of this chapter, shall request from the division of criminal justice services criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, concerning each prospective employee, consultant, assistant or volunteer of such provider who will have the potential for regular and substantial contact with children who are served by the publicly-funded emergency shelter for families with children.

(a) Prior to requesting criminal history information concerning any prospective employee, consultant, assistant or volunteer, a provider shall:

(1) inform the prospective employee, consultant, assistant or volunteer in writing that the provider is required to request his or her criminal history information from the division of criminal justice services and review such information pursuant to this section; and

(2) obtain the signed informed consent of the prospective employee, consultant, assistant or volunteer on a form supplied by the division of criminal justice services which indicates that such person has:

(i) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history information;

(ii) been informed of the reason for the request for his or her criminal history information;

(iii) consented to such request; and

(iv) supplied on the form a current mailing or home address.

(b) Upon receiving such written consent, the provider shall obtain a set of fingerprints of such prospective employee, consultant, assistant, or volunteer and provide such fingerprints to the division of criminal justice services pursuant to regulations established by the division of criminal justice services.

2. A provider shall designate one or two persons in its employ who shall be authorized to request, receive and review the criminal history information, and only such persons and the prospective employee, consultant, assistant or volunteer to which the criminal history information relates shall have access to such information; provided, however, the criminal history information may be disclosed to other personnel authorized by the provider who are empowered to make decisions concerning prospective employees, consultants, assistants or volunteers and provided further that such other personnel shall also be subject to the confidentiality requirements and all other provisions of this section. A provider shall notify each person authorized to have access to criminal history information pursuant to this section.

3. A provider requesting criminal history information pursuant to this section shall also complete a form developed for such purpose by the division of criminal justice services. Such form shall include a sworn statement of the person designated by such provider to request, receive and review criminal history information pursuant to subdivision two of this section certifying that:

(a) such criminal history information will be used by the provider solely for purposes authorized by this section;

(b) the provider and its staff are aware of and will abide by the confidentiality requirements and all other provisions of this section; and

(c) the persons designated by the provider to receive criminal history information pursuant to subdivision two of this section shall upon receipt immediately mark such criminal history information "confidential," and shall at all times maintain such criminal history information in a secure place.

4. Upon receipt of the fingerprints and sworn statement required by this section, the provider shall promptly submit the fingerprints to the division of criminal justice services.

5. The division of criminal justice services shall promptly provide the requested criminal history information, if any, to the provider that transmitted the fingerprints to it. Criminal history information

provided by the division of criminal justice services pursuant to this section shall be furnished only by mail or other method of secure and confidential delivery, addressed to the requesting provider. Such information and the envelope in which it is enclosed shall be prominently marked "confidential," and shall at all times be maintained by the provider in a secure place.

6. Upon receipt of criminal history information from the division of criminal justice services, the provider may request, and is entitled to receive, information pertaining to any crime identified on such criminal history information from any state or local law enforcement agency, district attorney, parole officer, probation officer or court for the purposes of determining whether any grounds relating to such crime exist for denying an application, renewal, or employment.

7. After receiving criminal history information pursuant to subdivisions five and six of this section and before making a determination, the provider shall provide the prospective employee, consultant, assistant or volunteer with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such prospective employee, consultant, assistant and volunteer of his or her right to seek correction of any incorrect information contained in such criminal history information provided by the division of criminal justice services pursuant to the regulations and procedures established by the division of criminal justice services and the right of the prospective employee, consultant, assistant or volunteer to provide information relevant to such analysis.

8. Criminal history information obtained pursuant to subdivisions five and six of this section shall be considered by the provider in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law.

9. A prospective employee, consultant, assistant or volunteer may withdraw from the application process, without prejudice, at any time regardless of whether he or she, or the provider, has reviewed his or

her criminal history information. Where a prospective employee, consultant, assistant or volunteer withdraws from the application process, any fingerprints and criminal history information concerning such prospective employee, consultant, assistant or volunteer received by the provider shall, within ninety days, be returned to such prospective employee, consultant, assistant or volunteer by the person designated for receipt of criminal history information pursuant to subdivision two of this section.

10. Any person who willfully permits the release of any confidential criminal history information contained in the report to persons not permitted by this section to receive such information shall be guilty of a misdemeanor.

11. The commissioner of the division of criminal justice services, in consultation with the office of temporary and disability assistance, shall promulgate all rules and regulations necessary to implement the provisions of this section, which shall include convenient procedures for the provider to promptly verify the accuracy of the reviewed criminal history information and, to the extent authorized by law, to have access to relevant documents related thereto.

TITLE 2

RESIDENTIAL PROGRAMS FOR ADULTS

- Section 461. Responsibility for standards.
- 461-a. Responsibility for inspection and supervision.
 - 461-b. Provisions related to establishment of adult care facilities.
 - 461-c. Resident care, services and charges.
 - 461-d. Rights of residents in adult care facilities.
 - 461-e. Records and reports.
 - 461-f. Operation of facility in receivership.
 - 461-g. Termination of admission agreements.
 - 461-h. Special proceeding for termination of adult home, residence for adults and enriched housing program admission agreements.

- 461-i. Planning and development grants for enriched housing programs.
- 461-j. Family type homes for adults; special needs funds.
- 461-k. Services for non-residents in certain adult care facilities.
- 461-l. Assisted living program.
- 461-m. Death and felony crime reporting.
- 461-o. Complaint investigation procedures.
- 461-p. Adult care facilities training program.
- 461-q. Temperature standards in adult homes, enriched housing programs and residences for adults.
- 461-r. Food services.
- 461-s. Enhancing the quality of adult living program for adult care facilities.
- 461-t. Review of criminal history information concerning prospective direct care employees.
- 461-u. Personal caregiving visitors for residents of adult care facilities during public health emergencies.

§ 461. Responsibility for standards. 1. The department shall promulgate and may alter or amend regulations effectuating the provisions of this title, including but not limited to establishing fiscal, administrative, architectural, safety, nutritional and program standards which apply to all adult care facilities subject to its inspection and supervision. Such regulations may be promulgated, altered or amended only after consultation with the board of social welfare, department of mental hygiene, health department and office for the aging.

2. In addition to those standards established pursuant to regulations under subdivision one hereof, the department of mental hygiene may propose any supplementary standards relating to the necessity for and content of programs designed to protect the health and well-being of mentally disabled persons, as defined in the mental hygiene law, which shall apply to any facility which cares for a significant number of such persons. The promulgation by the department of any regulations adopting

such supplementary standards shall be subject to the approval of the department of mental hygiene.

3. Nothing contained within this title shall prohibit an operator of any adult care facility from exceeding the requirements of this title or the regulations of the department which effectuate the provisions of this title.

§ 461-a. Responsibility for inspection and supervision. 1. The department shall be responsible for the inspection and supervision of all adult care facilities subject to the provisions of section four hundred sixty-c of this chapter; provided, however, that the department shall by a written cooperative agreement entered into by October first, nineteen hundred seventy-seven, develop a system of joint inspection with the department of mental hygiene, with respect to any such facility providing residential care to a significant number of mentally disabled persons.

2. (a) With respect to adult care facilities the department shall conduct a minimum of one unannounced inspection of each such facility to determine the adequacy of care being rendered, pursuant to the following:

(1) Such facilities receiving the department's highest rating shall be inspected at least once every eighteen months on an unannounced basis.

(2) All other such facilities shall be inspected on an unannounced basis no less than annually. The commissioner may provide for more frequent inspections of any such facilities. Such inspection shall not be required with respect to any facility for which the commissioner has delegated responsibility for inspection and supervision to a social services official pursuant to section four hundred sixty-c of this chapter. Any employee of the department or a social services district who gives or causes to be given advance notice of such unannounced inspections to any unauthorized persons shall, in addition to any other penalty provided by law, be suspended by the department or the social services district from all duties without pay for at least five days or for such greater period of time as the department or social services

district shall determine. Any such suspension shall be made by the department or social services district in accordance with all other applicable provisions of law.

(b) The department or a social services district, where appropriate, shall each year conduct a minimum of one full inspection of each adult care facility. Such inspection shall include, but shall not be limited to, examination of the medical, dietary and social services records of the facility as well as the minimum standards of construction, life safety standards, quality and adequacy of care, rights of residents, payments and all other areas of operation. The purpose of any inspection shall be to determine compliance with requirements of applicable provisions of law and regulations of the department.

(c) An inspection report shall be made of each inspection which shall clearly identify and indicate in detail each area of operation, including, but not limited to, the premises, equipment, personnel, resident care and services, and whether each such area of operation or any of its component parts is or is not in compliance with the regulations of the department and all other applicable requirements. It also shall identify those areas of operation or any of its component parts found not in compliance as a result of failure in systemic practices and procedures. The operator shall be notified of the results of the inspection in a manner to be determined by regulations of the department. Such notification shall contain directions as may be appropriate as to the manner and time in which compliance with applicable requirements of law or regulations of the department shall be effected. The department shall also require the operator of an adult home or residence for adults to develop, biannually update and implement plans for quality assurance activities for each area of operation. Quality assurance activities include but are not limited to, development and maintenance of performance standards including infection control, measurement of adherence to such standards and to applicable state and local laws and regulations, identification of performance failures, design, and implementation of corrective action. Each plan must also include the creation of a quality improvement committee that is charged with meeting periodically, at least once every six months, to review summary findings from monitoring implementation of the facility's plan, evaluating the effectiveness of corrective action policies, and

identifying trends and improvement activities. While reviewing facility performance, the committee shall not examine personally identifiable resident incidents. Such committee shall include the administrator or operator of the facility, the resident council president or other resident representative, and representatives from frontline employees from each area of operation.

(d) Systemic practices or procedures are those activities related to each area of operation which indicate a pattern or an inability to bring the operation of the facility into compliance with applicable provisions of laws and regulations.

(e) Nothing contained in this subdivision shall limit or restrict the ability of the department or social services district, where appropriate, to conduct more than one inspection of an adult care facility, for whatever purpose, as is deemed necessary for ensuring compliance with applicable provisions of law and regulations of the department.

3. (a) Pursuant to regulations promulgated by the commissioner, in consultation with the director of the state office for the aging, no facility or individual shall restrict or prohibit the access to the facility nor interfere with the performance of the official duties, including confidential visits with residents, of duly designated persons participating in the long term care ombudsman program as provided for in section five hundred forty-five of the executive law. No facility or individual shall retaliate or take reprisals against any resident, employee, or other person for having filed a complaint with, or having provided information to, any long term care patient ombudsman functioning in accordance with section five hundred forty-four or section five hundred forty-five of the executive law.

(b) In addition, no facility which provides residential care and services for adults shall restrict or prohibit the access to the facility nor interfere with confidential visits with residents by:

(i) Family members, guardians, friends of an individual resident and legal representatives, legal counsels and case managers;

(ii) Individuals representing community organizations or service agencies who will provide, free of charge, a service or educational program to residents;

(iii) An employee or representative of any public or private not-for-profit corporation, community organization or association whose primary purposes for visiting include assisting residents in resolving problems and complaints concerning their care and treatment, and in securing adequate services to meet their needs. The operator shall make available a common area of the facility for such visits.

(c) The department shall establish and maintain a registry of public or private not-for-profit corporations, community organizations or associations assured access to facilities which provide residential care and services for adults pursuant to subparagraph (iii) of paragraph (b) of this subdivision. Any such corporation, community organization or association shall file a copy of its certificate of incorporation with the registry established and maintained by the department.

(d) Persons assured access to a residential care facility for adults pursuant to this subdivision shall not enter the living area of any resident without identifying themselves to the resident, stating the purpose of the visit, and receiving the permission of the resident and the resident's roommate to enter the living area.

(e) Individual residents shall have the right to terminate or deny any visit to them by persons assured access to the facility pursuant to this subdivision.

(f) Visits by individuals assured access to facilities which provide residential care and services for adults pursuant to subparagraphs (i), (ii) and (iii) of paragraph (b) of this subdivision shall be permitted during a period of at least ten hours between 9:00 o'clock a.m. and 8:00 o'clock p.m. unless extended by arrangement with the facility.

(g) Notwithstanding any provision of paragraph (b) of this subdivision, the operator of a facility which provides residential care and services for adults may restrict or prohibit access to the facility or interfere with confidential visits with residents by individuals who the operator has reasonable cause to believe would directly endanger the safety of such residents.

(h) Whenever an individual is denied access pursuant to paragraph (g) of this subdivision the operator must record a detailed written statement describing the reasons for denial of access to any such individual. This statement shall be maintained by the facility and be accessible to residents, persons denied access, and the department.

(i) If the operator of a facility denies access pursuant to paragraph (g) of this subdivision, the person denied access may bring an action in supreme court in the county in which the facility is located for an order granting such person access to such facility. If the court finds that such denial was made in bad faith, the operator of the facility shall be liable for all costs, including reasonable attorney's fees, and the court may, in its discretion, assess a civil penalty not to exceed fifty dollars per day for each day such access was denied.

4. Pursuant to regulations promulgated by the commissioner in consultation with the director of the office for the aging, no facility shall restrict or prohibit access by records access ombudsmen specially designated under section five hundred forty-four of the executive law to the medical or personal records of any patient or resident if such patient or resident, or, where appropriate, committee for an incompetent, has given express written consent to such disclosure; provided, however, that (i) in the case of medical records, disclosure may be exclusive of the personal notes of the physician as defined in such regulations and (ii) access may be limited to such times as may be specified in such regulations. Such records shall be made available by a member or members of the facility's staff who shall be designated by the facility to provide access to and, where necessary, interpretation of such records to such access ombudsman, who shall have the right to photocopy such records. The facility may charge a reasonable fee for photocopying pursuant to such regulations. Disclosure to a records access ombudsman of records of any patient or resident pursuant to the written consent of such patient or resident shall not give rise to any claim against the facility, its staff, or the patient's or resident's physician based solely on the fact of such disclosure pursuant to such written consent. Nothing in this subdivision shall be construed to limit or abridge any right of access to records, including financial records, otherwise available to ombudsmen, patients or residents, or any other person.

§ 461-b. Provisions related to establishment of adult care facilities.

1. (a) Only a natural person or partnership composed only of natural

persons, a not-for-profit corporation, a public corporation, a business corporation other than a corporation whose shares are traded on a national securities exchange or are regularly quoted on a national over-the-counter market or a subsidiary of such corporation or a corporation any of the stock of which is owned by another corporation, a limited liability company provided that if a limited liability company has a member that is a corporation, a limited liability company or a partnership, the shareholders of the member corporation, the members of the member limited liability company, or the partners of the member partnership must be natural persons, a social services district or other governmental agency may be issued an operating certificate by the department for the purpose of operating an adult care facility, except family type homes for adults, which may be issued operating certificates by the department or social services district only if such facilities are operated by a natural person or persons. The holder of an operating certificate for the purposes of operating an adult home shall not be issued an operating certificate for the purposes of operating an enriched housing program if such adult home operator has not met compliance standards during the most recent inspection cycle. Provided however, the department may deem an operator eligible to receive an operating certificate for the purposes of operating an enriched housing program upon the consideration of the results of previous inspections and whether the operator is meeting the needs of the residents and is providing quality care.

(b) A natural person may seek certification as an operator of a family-type home for adults to provide long-term residential care and personal care and/or supervision to persons related to the operator, provided that the relationship between the operator and resident is not that of spouse, in-law, child or step-child.

(c) An appropriation made available for the purposes of funding the operating assistance sub-program for enriched housing up to the amount appropriated for such purpose in the nineteen hundred ninety-six--ninety-seven state fiscal year shall be limited to any enriched housing program operated by a public agency, public corporation or a not-for-profit corporation, which may be issued an operating certificate by the department to operate an enriched housing program.

2. (a) No adult care facility shall be operated unless and until the operator obtains the written approval of the department. Such approval may be granted only to an operator who satisfactorily demonstrates: that the operator is of good moral character; that the operator is financially responsible; that there is a public need for the facility; that the buildings, equipment, staff, standards of care and records to be employed in the operation comply with applicable law and regulations of the department and that any license or permit required by law for the operation of such facility has been issued to such operation. In determining whether there is a public need for the facility, the department shall give consideration to the relative concentration of such facilities in the area proposed to be serviced. Such approval for family type home for adults shall not be granted unless the appropriate social services official has made the required visitation and inspection and has submitted a report thereof to the department in accordance with this article.

(b) For existing licensed operators in good standing and their affiliates, the department shall develop a streamlined application review and approval process, in collaboration with representatives of associations of operators, to be available for use in relation to approval of an additional facility of the same type. Notwithstanding any provision of law or regulation to the contrary, the streamlined application review and approval process shall include, but not be limited to, the following:

(i) a certification process and form for the operator or its affiliate to attest that it will have sufficient financial resources, revenue and financing to meet facility expenses and resident needs, which shall satisfy the statutory and regulatory financial component of the application review and approval process;

(ii) a certification process and form for the operator or its affiliate to attest that its legal, corporate and organizational documents comply in substance with department requirements, which shall satisfy the statutory and regulatory legal component of the application review and approval process;

(iii) a certification process and form for the operator or its affiliate to attest that it is in substantial compliance with all applicable codes, rules and regulations in any other state in which it

operates, and to disclose any enforcement or administrative action taken against it in any other state;

(iv) issuance by the department of a conditional approval to operate the facility for a specified period of time upon substantial completion of the character and competence, legal, financial and architectural components of the application, so long as the operator or its affiliate agrees in writing to satisfy all pending conditions prior to the expiration of the conditional approval period or a time frame established by the department;

(v) issuance by the department of a conditional approval to construct a facility, at the operator's or its affiliate's own risk, upon substantial completion of the architectural component of the application;

(vi) elimination of duplicative submission and review of any application information which has been previously reviewed and approved by the department or any of its regional offices within the past two years through a certification process and form whereby the operator or its affiliate will attest that such application information is duplicative;

(vii) with respect to any programmatic application information to be reviewed by the regional office, such review shall be conducted on-site by the regional office during the pre-opening inspection or first full annual inspection, if the department has previously approved the operator or its affiliate to operate the same type of program at another facility within the past two years;

(viii) electronic submission of applications; and

(ix) a combined application for licensure as an adult care facility, assisted living residence and/or assisted living program, to the extent the department determines such a combined application is feasible.

(b-1) For purposes of paragraph (b) of this subdivision, "affiliate" shall mean an entity, for which a majority of the ownership or controlling interest is the same as the ownership or controlling interest in an existing licensed operator under this section (provided that an affiliate may have different percentages of ownership or control or fewer natural persons with ownership or control than an existing operator) and, further:

(i) for any entity owned, directly or indirectly, by natural persons:

(A) at all times, more than half of the ownership interest of the entity shall be owned, directly or indirectly, by natural persons who have previously been determined to have undergone a satisfactory determination of character, competence and standing in the community;

(B) at all times, any owner with a direct or indirect ownership interest who has not undergone a satisfactory determination of character, competence and standing in the community review must possess a less than ten percent direct or indirect interest in the entity, until a satisfactory determination has been made; and

(C) for any natural person proposed to be an owner, directly or indirectly, of the entity who is a controlling person, member, director, or officer of an existing licensed operator under this section, such existing licensed operator must be in good standing with the department; and

(ii) for any not-for-profit corporation or other entity not under subparagraph (i) of this paragraph:

(A) more than half of the entity's total board members, directors, officers and controlling persons shall have previously undergone a satisfactory determination of character, competence and standing in the community; and

(B) if any natural person proposed to be a board member, director, or officer of the entity has an ownership interest, directly or indirectly, or is a board member, director, officer, or controlling person, in an existing licensed operator under this section, such existing licensed operator must also be in good standing with the department.

(b-2) For purposes of paragraph (b) of this subdivision, "good standing" shall mean the operator and its affiliates have not (A) received any official written notice from the department of a proposed revocation, suspension, denial or limitation on the operating certificate of the facility or residence; (B) within the previous three years, been assessed a civil penalty after a hearing conducted pursuant to subparagraph one of paragraph (b) of subdivision seven of section four hundred sixty-d of this article for a violation that has not been rectified; (C) within the previous year, received any official written notice from the department of a proposed assessment of a civil penalty for a violation described in subparagraph two of paragraph (b) of subdivision seven of section four hundred sixty-d of this article; (D)

within the previous three years, been issued an order pursuant to subdivision two, five, six or eight of section four hundred sixty-d of this article; (E) within the previous three years, been placed on, and if placed on, removed from the department's "do not refer list" pursuant to subdivision fifteen of section four hundred sixty-d of this article. Provided, however, that in the case of an operator or affiliate that is not in good standing as provided in this paragraph, the department may permit the operator or affiliate to use the streamlined application process, in its discretion, if it determines that the disqualifying violation was an isolated occurrence that was promptly corrected by the operator or affiliate.

(c) After an operator obtains approval of the department for the operation of an adult care facility he may operate such facility only so long as he continues to do so in compliance with the requirements of such approval, applicable law, and the regulations of the department.

(d) The knowing operation of an adult care facility without the prior written approval of the department shall be a class A misdemeanor.

3. (a) The department shall not approve an application for establishment of an adult care facility unless it is satisfied insofar as applicable, as to (i) the character, competence and standing in the community, of the applicant; provided, however, with respect to any such applicant who is already or within the past ten years has been an incorporator, director, sponsor, stockholder, operator, administrator, member or owner of any adult care facility which has been issued an operating certificate by the board or the department, or of a halfway house, hostel or other residential facility or of a program or facility licensed or operated by a health, mental hygiene, social services or education agency or department of this or any state, or a program serving persons with mental disabilities, or other persons with disabilities as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, the aged, children or other persons receiving health, mental hygiene, residential, social or educational services, no approval of such application shall be granted unless the department shall affirmatively find by substantial evidence as to each such applicant that a substantially consistent high level of care is being or was being rendered in each such facility or institution with

which such person is or was affiliated; for the purposes of this paragraph, there may be a finding that a substantially consistent high level of care has been rendered where there have been violations of applicable rules and regulations, that (1) did not threaten to directly affect the health, safety or welfare of any patient or resident, and (2) were promptly corrected and not recurrent; (ii) the financial resources of the proposed facility and its sources of future revenue; and (iii) such other matters as it shall deem pertinent.

(b) Any natural person or partnership composed only of natural persons, not-for-profit corporation, public corporation, business corporation other than a corporation whose shares are traded on a national securities exchange or are regularly quoted on a national over-the-counter market or a subsidiary of such corporation or a corporation any of the stock of which is owned by another corporation, a limited liability company provided that if a limited liability company has a member that is a corporation, a limited liability company or a partnership, the shareholders of the member corporation, the members of the member limited liability company, or the partners of the member partnership must be natural persons, social services district or other governmental agency filing an application for approval to operate a residence for adults, adult home or enriched housing program, shall file with the department such information on the ownership of the property interest in such facility as shall be prescribed by regulation, including the following:

(i) The name and address and a description of the interest held by each of the following persons:

(1) any person, who directly or indirectly, beneficially owns any interest in the land on which the facility is located;

(2) any person who, directly or indirectly, beneficially owns any interest in the building in which the facility is located;

(3) any person who, directly or indirectly, beneficially owns any interest in any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or building in which the facility is located; and

(4) any person who, directly or indirectly, has any interest as lessor or lessee in any lease or sub-lease of the land on which or the building in which the facility is located.

(ii) If any person named in response to subparagraph (i) of this paragraph is a partnership or limited liability company, then the name and address of each partner or member.

(iii) If any person named in response to subparagraph (i) of this subdivision is a corporation, other than a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of each officer, director, stockholder and, if known, each principal stockholder and controlling person of such corporation.

(iv) If any corporation named in response to subparagraph (i) of this subdivision is a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of the principal executive officers and each director and, if known, each principal stockholder of such corporation.

(v) For the purpose of this section the term "controlling person" shall mean any person who by reason of a direct or indirect ownership interest (whether of record or beneficial) has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of said corporation, partnership or other entity. Neither the department nor any employee of the department shall, by reason of his or her official position, be deemed a controlling person of any corporation, partnership or other entity, nor shall any person who serves as an officer, administrator or other employee of any corporation, partnership or other entity or as a member of a board of directors or trustees of any corporation be deemed to be a controlling person of such corporation, partnership or other entity as a result of such position or his or her official actions in such position. The term "principal stockholder" shall mean any person who beneficially owns, holds or has the power to vote, ten percent or more of any class of securities issued by said corporation.

(c) No articles of organization of a limited liability company established pursuant to the New York limited liability law which includes among its powers or purposes the establishment or operation of

any adult home, residence for adults or enriched housing program as defined in section two of this chapter, shall be filed with the department of state unless the written approval of the department is annexed to the articles of organization.

3-a. (a) Every person who is a controlling person of any adult care facility liable under any provision of this article to any person or class of persons for damages or to the state for any civil fine, penalty, assessment of damages, shall also be liable, jointly and severally, with and to the same extent as such adult care facility, to such person or class of persons for damages or to the state for any such civil fine, penalty, assessment or damages.

(b) For the purposes of this section the term "controlling person" shall mean any person who by reason of a direct or indirect ownership interest (whether of record or beneficial) has the ability, acting either alone or in concert with others with ownership interests, to direct or cause the direction of the management or policies of said corporation, partnership or other entity. Neither the department nor any employee of the department shall, by reason of his or her official position, be deemed a controlling person of any corporation, partnership or other entity, nor shall any person who serves as an officer, administrator or other employee of any corporation, partnership or other entity or as a member of a board of directors or trustees of any corporation be deemed to be a controlling person of such corporation, partnership or other entity as a result of such position or his or her official actions in such position. The term "principal stockholder" shall mean any person who beneficially owns, holds or has the power to vote, ten percent or more of any class of securities issued by said corporation.

4. No person, corporation, home, institution, hotel or other residential facility or accommodation other than a facility or agency which possesses a valid operating certificate, as required under the provisions of this chapter, the mental hygiene law or public health law shall hold itself out, advertise or otherwise in any form or manner represent that it is a facility offering accommodations and services for dependent, aged or disabled adults.

5. Any adult care facility subject to the provisions of this section that possesses a valid operating certificate as of October first, nineteen hundred seventy-seven shall be deemed to have department approval to continue operation of such facility for the duration or the period for which such certificate was issued, provided such facility continues to be operated in accordance with applicable provisions of law and department regulations.

6. (a) The department, prior to making a final determination with respect to approving the establishment of, or the certificate of incorporation of, or the articles of organization of, or an operating certificate for a residence for adults, adult home, or enriched housing program, shall in addition to any other requirements of law take into consideration and be empowered to request information and advice as to the availability of facilities or services such as ambulatory, home care or other services which may serve as alternatives or substitutes for the whole or any part of a proposed facility and the possible economies and improvements in services to be anticipated from the operation of centralized facilities and services reasonably available in the regional services area.

(b) In determining whether there is a public need for a residence for adults or an adult home, the department shall consider the advice of the state health planning and development agency designated pursuant to the provisions of the national health planning and resources development act of nineteen hundred seventy-four and any amendments thereto.

(c) Notwithstanding any other provision of this article, the department shall not consider public need in determining whether to approve any proprietary adult home that was in existence and operating on September first, nineteen hundred seventy-five as a family care home under the mental hygiene law or an adult care facility operated by a social services district.

7. (a) The department shall suspend, limit, modify or revoke an operating certificate of a shelter for adults, residence for adults or adult home upon determining that such action would be in the public interest in order to conserve resources by restricting the number of

beds, or the level of services, or both, to those which are actually needed, after taking into consideration the total number of beds necessary to meet the public need, and the availability of facilities or services such as ambulatory, home care or other services which may serve as alternatives or substitutes for the whole or any part of a facility, and in the case of modification, the level of care and the nature and type of services provided by a facility or required by all or some of the residents in or seeking admission to such facility, and whether such level of care is consistent with the operating certificate of the facility.

(b) Wherever any finding as described in this subdivision is under consideration with respect to any particular facility, the department shall cause to be published in a newspaper of general circulation in the geographic area of the facility at least thirty days prior to making such a finding an announcement that such a finding is under consideration and an address to which interested persons can write to make their views known. The department shall take all public comments into consideration in making such a finding.

(c) The department shall, upon such finding described in this subdivision with respect to any facility or project, cause such facility to be notified of the finding at least thirty days in advance of taking the proposed action to revoke, suspend, limit, or modify the facility's operating certificate. Upon receipt of any such notification and before the expiration of the thirty days or such longer period as may be specified in the notice, the facility may request a public hearing to be held in the county in which the facility is located. In no event shall the revocation, suspension, limitation, or modification take effect prior to the thirtieth day after the date of the notice or prior to the effective date specified in the notice or prior to the date of the hearing decision, whichever is later.

(d) Except as otherwise provided by law, all appeals from a finding of the department made pursuant to this subdivision shall be directly to the appellate division of the supreme court in the third department. Except as otherwise expressly provided by law, such appeals shall have preference over all issues in all courts.

8. No adult care facility certified by the department which is

operating in compliance with this chapter and regulations shall be required to be certified by the office of mental health as a residential care center for adults.

9. (a) The prior written approval of the department is required for: (i) any transfer, assignment or other disposition of ten percent or more of an interest or voting rights in a partnership, business corporation or limited liability company which is the operator of an adult care facility to a new partner, shareholder or member; or (ii) any transfer, assignment or other disposition of interest or voting rights in a partnership, business corporation or limited liability company which is the operator of an adult care facility which results in the ownership or control of more than ten percent of the interest or voting rights thereunder by any person who has not been previously approved by the department for that operator.

(b) With respect to a transfer, assignment or disposition involving less than ten percent of an interest or voting rights in such partnership, business corporation or limited liability company to a new partner, shareholder or member, no prior approval of the department shall be required except where required by paragraph (a) of this subdivision. However, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the partnership, business corporation or limited liability company fully completes and files with the department notice on a form, to be developed by the department, which shall disclose such information as may reasonably be necessary for the department to determine whether it should prohibit the transaction. Within ninety days from the date of receipt of such notice, the department may prohibit any such transaction under this subparagraph if it finds: (i) there are reasonable grounds to believe the proposed transaction does not satisfy the character and competence review, as may be appropriate; or (ii) if the transaction, together with all other such transactions during any five year period, would in the aggregate, involve twenty-five percent or more of the interest in the entity that constitutes the operator. The department shall state the specific reasons for prohibiting any transaction under this subparagraph and shall so notify each party to the proposed transaction.

(c) With respect to a transfer, assignment or disposition of an interest or voting rights in a partnership, business corporation or limited liability company to any existing partner, shareholder or member, no prior approval of the department shall be required. However, if the transaction involves the withdrawal of the transferor from the partnership, business corporation or limited liability company, no such transaction shall be effective unless at least ninety days prior to the intended effective date thereof, the partnership, business corporation or limited liability company fully completes and files with the department notice of such transaction. Within ninety days from the date of receipt of such notice, the department may prohibit any such transaction under this paragraph if the equity position of the partnership, business corporation or limited liability company, determined in accordance with generally accepted accounting principles, would be reduced as a result of the transfer, assignment or disposition. The department shall state the specific reason for prohibiting any transaction under this paragraph and shall so notify each party to the proposed transaction.

10. Notwithstanding any provision of law to the contrary, the department is authorized to approve a certificate of incorporation or articles of organization for establishment of an adult care facility on an expedited basis where: (a) the certificate of incorporation or articles of organization reflects solely a change in the form of the business organization of an existing entity which had been approved by the department to operate an adult care facility; (b) every incorporator, stockholder, member and director of the new entity shall have been an owner, partner, incorporator, stockholder, member or director of the existing entity; (c) the distribution of ownership interests and voting rights in the new entity shall be the same as in the existing entity; and (d) there shall be no change in the operator of the adult care facility other than the form of its business organization, as a result of the approval of such certificate of incorporation or articles of organization. Upon submission, if the department does not object to the proposal within ninety days of the receipt of a complete application, the proposal will be deemed acceptable to the department and an amended operating certificate shall

be issued.

§ 461-c. Resident care, services and charges. 1. Every operator of an adult care facility, except a shelter for adults, shall execute with each applicant for admission a written admission agreement, dated and signed by the operator and the parties to be charged, which shall contain the entire agreement of the parties and such other information as department regulations shall require.

2. Such agreement executed pursuant to subdivision one of this section shall enumerate in such detail as may be required by department regulation all charges, expenses and other assessments, if any, for services, materials, equipment and food, required by law or regulations and other services, materials, equipment and food which such operator agrees to furnish and supply to such resident during the period of residency. No additional charges or expenses may be assessed against any resident of a residence for adults, adult home or enriched housing program, in excess of that contained in such agreement, except (a) upon express written approval and authority of the resident, or his or her sponsor, if any, or (b) in order to provide additional care, services or supplies, upon the express order of the attending physician of the resident, or (c) upon thirty days notice to the resident and to his or her sponsor, if any, of additional charges and expenses due to increased cost of maintenance and operation. However, in the event of any emergency arising which affects such resident, additional charges may be assessed for the benefit of such resident as are reasonable and necessary for services, materials, equipment and food furnished and supplied during such emergency.

2-a. (a) There shall be an implied warranty of habitability in each written admission agreement executed pursuant to this section that shall ensure the premises be fit for human habitation and for the uses reasonably intended by the operator and the resident and that the occupants of the facility shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health, safety or welfare. Such statement shall not be read to be in any way

limiting a resident's rights to relief in an administrative or judicial proceeding.

(b) An action for breach of the warranty of habitability and any violation of a written admission agreement may be maintained in a court of competent jurisdiction by the resident or representative of the resident. The court shall apply New York Rules of Court Part 130 to any action brought pursuant to this section.

3. The written agreement executed pursuant to subdivision one of this section shall include a statement indicating that the resident and any person designated by the resident shall be notified by the operator at the request of the resident pursuant to regulations promulgated by the department and, shall be provided written notification by the facility not less than thirty days prior to a termination of the resident's admission and services agreement; a statement that upon discharge or transfer, the resident and any person designated by the resident shall be notified by the operator at the request of the resident pursuant to regulations promulgated by the department and, is entitled to a final written statement of his or her account and that the resident is entitled to the prompt return, within three business days, of any of his or her money, property or thing of value held in trust or in custody by the facility; a statement which details any and all money, property or thing of value which is given, or promised to be given to the facility on admission or at any other time, including any agreements made by third parties for the benefit of a resident; and such other provisions as the department determines necessary to fully inform the resident of those items of care, services, materials, equipment and food that must be provided by the facility pursuant to other applicable laws and regulations, and the frequency thereof, and any additional items of care, services, materials, equipment and food that the facility may in its discretion agree to provide, and the frequency thereof. Waiver of any provision contained herein by a resident shall be void. Such statement as herein provided shall be annexed to the admission agreement.

4. No resident of an adult care facility who is entitled to receive a personal allowance pursuant to the provisions of section one hundred

thirty-one-o of this chapter shall be required to use any of the proceeds from such allowance to pay the operator of an adult care facility for any services or supplies, unless the resident elects to purchase such services or supplies and the department has determined that such services or supplies are not otherwise required to be provided by the operator pursuant to law, regulation or agreement and the charges for such services or supplies are reasonable.

5. Whenever a resident authorizes an operator of an adult care facility or any person affiliated therewith, to exercise control over his or her money, property or thing of value, such authorization shall be in writing and subscribed by the parties to be charged. Any such money, property or thing of value belonging to the resident shall not be mingled with the funds or become an asset of the person receiving the same, but shall be segregated and recorded on the facility's financial records as independent accounts.

6. No adult care facility shall receive or retain any person who is in need of continual medical or nursing care as provided by facilities licensed pursuant to article twenty-eight of the public health law or articles nineteen, twenty-three, thirty-one and thirty-two of the mental hygiene law.

7. (a) At the time of the admission to an adult care facility, other than a shelter for adults, a resident shall submit to the facility a written report from a physician, a physician assistant or a nurse practitioner, which report shall state:

(i) that the physician, physician assistant or nurse practitioner has physically examined the resident within one month and the date of such examination;

(ii) that the resident is not in need of acute or long term medical or nursing care which would require placement in a hospital or residential health care facility; and

(iii) that the resident is not otherwise medically or mentally unsuited for care in the facility.

(b) For the purpose of creating an accessible and available record and assuring that a resident is properly placed in such a facility, the

report shall also contain the resident's significant medical history and current conditions, the prescribed medication regimen, and recommendations for diet, the assistance needed in the activities of daily living and where appropriate, recommendations for exercise, recreation and frequency of medical examinations.

(c) Such resident shall thereafter be examined by a physician, a physician assistant or a nurse practitioner, at least annually and shall submit an annual written report in conformity with the provisions of this subdivision.

(d) Following a resident's stay in a hospital or residential health care facility, upon return to the adult care facility, the adult care facility shall not be required to obtain the report in paragraph (a) of this subdivision, and instead shall obtain a statement from the discharging facility which shall:

(i) state that the resident is appropriate to return to the facility; and

(ii) include the reason for the resident's stay, the treatment plan to be followed, and any new or changed orders, including medications.

The statement shall be completed by a physician, a physician assistant or a nurse practitioner.

(e) Nothing required in this section shall require the use of an identical form in adult care facilities and assisted living residences, either upon admission or return.

8. The department shall promulgate regulations with respect to the safekeeping and administration of medications in any adult care facility subject to the provisions of section four hundred sixty-c of this article, in accordance with applicable provisions of law, and after consultation with the state department of health and appropriate offices of the state department of mental hygiene.

9. The department shall, with the consent of a resident living in a facility which has received the lowest rating for eighteen months from the effective date of this subdivision, pursuant to section four hundred sixty-one-n of this title, present the resident and any person designated by the resident with options on relocating such resident to a

facility which has obtained a higher rating, or other housing alternatives.

§ 461-d. Rights of residents in adult care facilities. 1. The principles enunciated in subdivision three hereof are declared to be the public policy of the state and a copy of such statement of rights and responsibilities shall be posted conspicuously in a public place in each facility covered hereunder.

2. The department shall require that every adult care facility shall adopt and make public a statement of the rights and responsibilities of the residents who are receiving care in such facilities, and shall treat such residents in accordance with the provisions of such statement.

3. Resident rights and responsibilities shall include, but not be limited to the following:

(a) Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge or available choices, shall not be infringed and the facility shall encourage and assist in the fullest possible exercise of these rights.

(b) Every resident shall have the right to have private communications and consultations with his or her physician, attorney, and any other person.

(c) Every resident shall have the right to present grievances on behalf of himself or herself or others, to the facility's staff or administrator, to governmental officials, or to any person without fear of reprisal, and to join with other residents or individuals within or outside of the facility to work for improvements in resident care.

(d) Every resident shall have the right to manage his or her own financial affairs.

(e) Every resident shall have the right to have privacy in treatment and in caring for personal needs.

(f) Every resident shall have the right to confidentiality in the treatment of personal, social, financial and medical records, and security in storing personal possessions.

(g) Every resident shall have the right to receive courteous, fair,

and respectful care and treatment and a written statement of the services provided by the facility, including those required to be offered on an as-needed basis.

(h) Every resident shall have the right to receive or to send personal mail or any other correspondence without interception or interference by the operator of an adult care facility or any person affiliated therewith.

(i) Every resident shall have the responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of the other residents.

(j) The facility is required to include on its accident or incident report the resident's version of the events leading to an accident or incident involving such resident, unless the resident objects.

(k) Every resident shall have the right to authorize those family members and other adults who will be given priority to visit consistent with the resident's ability to receive visitors.

(l) Every resident or, in the case of a person who lacks capacity to consent to his or her health care, a person legally authorized to consent on behalf of the resident, shall have the right to be fully informed by his or her physician, or other health or mental health provider of his or her medical condition and proposed medication, treatment and services, unless medically contraindicated, and to refuse medication, treatment or services after being fully informed of the consequences of such actions; provided that an operator acting reasonably and in good faith, shall not be held liable or penalized for complying with the refusal of such medication, treatment or services by a resident or, in the case of a person who lacks capacity to consent to his or her health care, a person legally authorized to consent on behalf of the resident, who has been fully informed of the consequences of such refusal.

(m) Every resident or, in the case of a person who lacks capacity to consent to his or her health care, a person legally authorized to consent on behalf of the resident, shall have the right to choose the resident's own health care providers for services not covered by his or her admission agreement.

Waiver of any provision contained within this subdivision by a

resident of an adult care facility shall be void.

4. Every resident of a residence for adults, adult home or enriched housing program, shall be entitled to receive compensation for services performed on behalf of such facility or persons affiliated therewith, and the operator of such facility shall maintain written records stating the duties to be performed, the rate and type of compensation, and the hours and days during which these services will be performed.

5. Each operator shall give a copy of the statement of rights and responsibilities to each resident at or prior to the time of admission to the facility, or to the appointed personal representative and to each member of the facility's staff.

6. An operator or employee of a residence for adults, adult home or enriched housing program or any other entity which is a representative payee of a resident of such facility pursuant to designation by the social security administration or which otherwise assumes management responsibility over the funds of a resident shall maintain such funds in a fiduciary capacity to the resident. Any interest on money received and held for the resident shall be the property of the individual resident.

7. Every operator of a residence for adults, adult home, enriched housing program or family type home for adults shall post a long term care ombudsman poster in such facility in the main entrance or public posting area where notices to residents are commonly displayed, or, if there is no such main entrance or posting area, in the several public areas within the facility where notices to residents are commonly displayed, and shall make the long term care ombudsman brochure available to residents upon request.

§ 461-e. Records and reports. 1. Every adult care facility shall maintain, as public information available for public inspection under such conditions as the department shall prescribe, records containing copies of the most recent inspection report pertaining to the facility that has been issued by the department or social services district or to

the facility.

2. Pursuant to the provisions of article six of the public officers law, the department shall make available for public inspection copies of all inspection reports of adult care facilities issued by the department.

3. Every adult care facility shall:

(a) Post in a prominent position in the facility so as to be accessible to all residents and to the general public, a summary of the most recent inspection of such facility performed by the department or a social services district.

(b) Provide to any resident and each applicant for admission an opportunity to review the most recent inspection report pertaining to and issued by the department or social services district to such facility.

4. (a) Each adult home and residence for adults except those operated by a social services district shall file an annual financial statement with the department on or before the fifteenth day of the sixth calendar month after the close of the facility's fiscal year for which such report is due, upon forms prescribed by the department and in compliance with the regulations of the department. Such statement shall clearly set forth all financial information pertaining to the operation of such facility in accordance with generally accepted accounting principles, including but not limited to the following:

(i) revenues and expenses by categories during such fiscal year.

(ii) a balance sheet of the facility as of the end of such fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation and similar accounts.

(iii) a statement of operations of the facility for such fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges.

(iv) the name and address of each of the following persons:

(1) the operator of the facility;

(2) any person who, directly or indirectly, beneficially owns any interest in the land on which the facility is located;

(3) any person who, directly or indirectly, beneficially owns any interest in the building in which the facility is located;

(4) any person who, directly or indirectly, beneficially owns any interest in any mortgage, note, deed of trust or other obligation secured in whole or in part by the land on which or building in which the facility is located; and

(5) any person who, directly or indirectly, has any interest as lessor or lessee in any lease or sub-lease of the land on which or the building in which the facility is located.

(v) if the facility or any person named in response to subparagraph (iv) of this paragraph is a partnership, then the name and home address of each partner.

(vi) if the facility or any person named in response to subparagraph (iv) of this paragraph is a corporation, other than a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of each officer, director, and each principal stockholder and controlling person of such corporation.

(vii) if any corporation named in response to subparagraph (iv) of this paragraph is a corporation whose shares are traded on a national securities exchange or are regularly quoted in an over-the-counter market or which is a commercial bank, savings bank or savings and loan association, then the name and address of the principal executive officers and each director and, if known, each principal stockholder of such corporation.

(viii) if the facility paid or received an aggregate of five hundred dollars or more during the fiscal year in connection with transactions with any person named in response to subparagraph (iv), (v), (vi) or (vii) of this paragraph or any affiliate of said person, a description of the transactions, naming the parties thereto and describing the relationships which require the transactions to be described and the goods, services, payments or other consideration received by each party to the transactions. Such facility must make available to the department, when requested, adequate documentation to support the costs involved including access to books and records related to such transactions.

(ix) if known, the nature and amount of any interest in, or relationship with, any other adult care facility, held by any person named in response to subparagraph (iv) of this paragraph, or by any affiliate of such person.

(x) the following definitions shall be applicable to this paragraph and to any reports filed pursuant to this paragraph:

(1) "affiliate" means:

(A) with respect to a partnership, each partner thereof;

(B) with respect to a corporation, each officer, director, principal stockholder and controlling person thereof;

(C) with respect to a natural person (a) each member of said person's immediate family, (b) each partnership and each partner thereof of which said person or any affiliate of said person is a partner, and (c) each corporation in which said person or any affiliate of said person is an officer, director, principal stockholder or controlling person;

(2) "controlling person" of any corporation, partnership or other entity means any person who has the power, directly or indirectly, to significantly influence or direct the actions or policies of such facility. Neither the department nor any employee of the department shall, by reason of his or her official position, be deemed a controlling person of any corporation, partnership or other entity;

(3) "immediate family" of any person includes each parent, child, spouse, brother, sister, first cousin, aunt and uncle of such person whether such relationship arises by reason of birth, marriage or adoption;

(4) "principal stockholder" of a corporation means any person who beneficially owns, holds or has the power to vote, ten percent or more of any class of securities issued by said corporation.

(xi) together with such other information as may be required by the department.

Such statement shall be accompanied by an opinion signed by an independent licensed accountant that such financial statement represents the financial operations and position of the facility, except such opinion shall not be required for facilities with a capacity of nine or less.

(b) The department shall accept in full satisfaction of the provisions

of this subdivision from operators of adult homes and residences for adults who are required to submit an annual report as a charitable organization to the secretary of state of the state of New York or are required to submit to the commissioner of the New York state department of health an annual report of residential health care facilities, a certified copy of such report and upon request from the department an uncertified copy of the financial statement required to be filed with the department pursuant to the provisions of this subdivision.

(c) The department may examine the books and records of any adult home or residence for adults to determine the accuracy of the annual financial statement or for any other reason deemed appropriate by the department to effectuate the purposes of this section.

(d) The department shall perform on a selected sample of adult homes and residences for adults, a financial audit as part of the inspection procedure.

(e) Each enriched housing program shall file financial statements with the department on at least an annual basis, in accordance with regulations.

5. The department may promulgate regulations which require each adult care facility to maintain the following written records and any other such records, under such conditions and for such time, as may be prescribed pursuant to such regulations: (i) a chronological admission and discharge register consisting of a listing of residents registered in and discharged from such facility by name, age, race or ethnicity, sex of resident, and place from or to which the resident is registered or discharged, (ii) a daily census record, (iii) a personal non-medical record for each resident, including but not limited to, identification of his or her next-of-kin, family and sponsor, the name and address of the person or persons to be contacted in the event of an emergency, and all details of the referral and registration and non-medical correspondence and papers concerning the resident, (iv) a financial record for each resident, including but not limited to, copies of all agreements, resident account records and a current inventory of personal property being held by the operator.

6. No facts and information retained as part of individual resident

records by an operator of an adult care facility may be released to anyone other than the resident, the resident's next-of-kin or authorized representative of the resident, the operator, his employees or agents, or an employee or designee of the department without the written permission of the resident.

7. Nothing contained in this section shall be construed or deemed to require the public disclosure of confidential medical, social, personal or financial records of any resident. The department shall adopt such regulations as may be necessary to give effect to the provisions of this section and to preserve the confidentiality of medical, social, personal or financial records of residents.

8. Nothing contained in this section shall be construed or deemed to require the disclosure of the names and addresses or other information that would identify or tend to identify persons who file complaints with the department concerning the operation of adult care facilities. This shall apply to all complaints, regardless of whether the department is able to substantiate the complaint. Such information shall be deemed to be confidential and shall only be made available to a district attorney or police officer conducting a criminal investigation or prosecution relating to an adult care facility and only upon the written request of the investigating officer or district attorney; or to a court or to the presiding officer of an administrative proceeding and the parties to such proceeding if, with the consent of the persons providing such information, it is to be utilized by the department or any other state or local agency or subdivision in such proceeding. If a party is not provided with the identity of a person providing information in accordance with the provisions of this section, the fact that such confidential report was made shall in no way be relied upon by any court or presiding officer of an administrative proceeding in the course of reaching a determination in such proceeding. The department shall, consistent with the provisions of this section, adopt such regulations as may be necessary to preserve the confidentiality of persons making such complaints.

§ 461-f. Operation of facility in receivership. 1. As a means of protecting the health, safety and welfare of the residents of an adult care facility subject to inspection and supervision by the department, it may become necessary under certain circumstances to authorize the continuing operation of such facility for a temporary period by a court appointed receiver, at the discretion of the commissioner, as provided in this section or with respect to an adult home, enriched housing program or residence for adults, a receiver approved by the department of health pursuant to written agreement between the department and the operator or operators of such facility, provided that such agreement shall not exceed a period of sixty days but may be extended for an additional sixty day period upon agreement by the parties.

2. The operator or operators of any adult home, enriched housing program or residence for adults may at any time request the department of health to appoint a receiver to take over the operation of such facility. Upon receiving such a request, the department of health may, if it deems such action desirable, enter into an agreement with any such operator or operators for the appointment of a receiver to take charge of the facility under whatever conditions as shall be found acceptable by the parties, provided that such agreement shall not exceed a period of sixty days but may be extended for an additional sixty day period upon agreement by the parties.

3. (a) In the event of a transfer of possession of the premises of such facility from an approved operator to a court appointed receiver in a bankruptcy or mortgage foreclosure proceeding, the department may authorize such court appointed receiver to continue to operate such facility for a temporary period pending the filing and review of an application to the department by such receiver or by another person for an operating certificate, provided, however, that such court appointed receiver agrees to operate the facility during such temporary period in accordance with such terms and conditions as may be set by the department, which terms and conditions shall include compliance with all applicable provisions of law and regulations of the department, and which shall include a waiver by the receiver of any assessment of fees against the department, the commissioner and the state. Such application

for an operating certificate shall be filed within ninety days after the transfer of possession to the receiver, unless the time for such filing is extended by the department.

(b) The commissioner may make application to appear and advise the court of any objections he may have to the transfer of possession from the approved operator to any other person including a receiver or of any objections he may have to continuing a receiver or any other person in possession.

(c) After a receiver obtains such temporary authorization, he may operate such facility only so long as he continues to do so in compliance with the applicable law, regulations of the department, and the terms and conditions for such authorization as set by the department.

4. (a) When the department revokes or temporarily suspends the operating certificate of such facility and the commissioner determines that appointment of a receiver is necessary to protect the health, safety and welfare of the residents of a facility the commissioner may apply to the supreme court in the county where the facility is situated for an order directing the operators, owners and prime lessors, if any, of the premises to show cause why the commissioner, or at the discretion of the commissioner, his designee, should not be appointed receiver to take charge of the facility. Such order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy thereof and the papers on which it is based on the operators, owners and prime lessors, if any, of the premises. If any such operator, owner or prime lessor cannot with due diligence be served personally within the county where the property is located and within the time fixed in such order, then service may be made on such person by posting a copy thereof in a conspicuous place within the facility in question, and by sending a copy thereof by registered mail, return receipt requested, to such operator, owner or prime lessor at the last address reported to the department, or otherwise known to the department.

(b) On the return of said order to show cause, determination shall have precedence over every other business of the court unless the court shall find that some other pending proceeding, having similar statutory

precedence, shall have priority. The court may conduct a hearing at which all interested parties shall have the opportunity to present evidence pertaining to the application. If the court shall find that the facts warrant the granting thereof, then the commissioner, or at the discretion of the commissioner, any person designated by the commissioner, shall be appointed receiver to take charge of the facility. Except in the case where the receiver is assuming an existing bona fide arms length lease, the commissioner shall determine a reasonable monthly rental for the facility, based on consideration of all appropriate factors, including the condition of such facility. The rent as determined by the commissioner shall be paid by the receiver to the owners or prime lessors as may be directed by the court for each month that the receivership remains in effect, provided, however that nothing contained herein shall be construed to alter or diminish any obligation the operator may have under any currently valid lease.

(c) Any receiver appointed pursuant to this subdivision shall have all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property, together with such additional powers and duties as are herein granted and imposed. The receiver shall with all reasonable speed but, in any case, within six months after the date on which the receivership was ordered, unless otherwise extended by the court, provide for the orderly transfer of all residents in the facility to other facilities or make other provisions for their continued safety and care. He shall, during this period, operate the facility in compliance with the applicable law and regulations of the department, and shall have such additional powers, approved by the commissioner, to incur expenses as may be necessary to so operate the facility. The receiver shall not be required to file any bond. He shall collect incoming payments from all sources and apply them to the costs incurred in the performance of his functions as receiver. The receiver shall honor all existing leases, mortgages and chattel mortgages that had previously been undertaken as obligations of the owners or operators of the facility. No security interest in any real or personal property comprising the facility or contained within the facility, or in any fixture of the facility, shall be impaired or diminished in priority by the receiver. The receiver shall compensate the owners of any goods held in inventory for those goods which he uses or causes to be used by

reimbursing the costs of such goods, except that no such compensation shall be made for any such goods for which such owners have already been reimbursed.

(d) (i) The receiver shall be entitled to a fee and reimbursement for expenses as determined by the commissioner, based upon consideration of all appropriate factors relating to the operation of the facility, to be paid as a charge against the operator, not to exceed the fees, commissions and necessary expenses authorized to be paid to receivers in an action to foreclose a mortgage.

(ii) The receiver shall be liable only in his official capacity for injury to person and property by reason of conditions of the facility in a case where an owner would have been liable; he shall not have any liability in his personal capacity, except for gross negligence and intentional acts.

(iii) The receiver appointed pursuant to this subdivision may, subject to approval by the commissioner, ratify any collective bargaining agreement in effect between the operator and the employees of a facility, or suspend such collective bargaining agreement, provided however, that he remain liable for payment of wages and salaries at the rates and levels in effect at the time of his appointment.

(iv) (A) The receiver shall notify the commissioner of any lien or conveyance made in contemplation of receivership with an intent to remove an asset of the facility from the jurisdiction and use of the receiver, or to hinder or delay the receiver in the execution of his duties and responsibilities as receiver; such notice shall be forwarded to the commissioner in a manner to be determined by regulations of the department.

(B) With respect to any such lien or conveyance, the commissioner shall have available any remedy available to a trustee in a bankruptcy proceeding pursuant to the federal bankruptcy act or any remedy available to a creditor in a proceeding pursuant to article ten of the debtor and creditor law and may apply to the court to have such lien or conveyance set aside, or to have the court make any order which the circumstances of the case may require.

(e) (i) The court shall terminate the receivership only under any of the following circumstances:

a. six months after the date on which it was ordered, except that the court may extend such period for good cause shown;

b. when the department grants the facility a new operating certificate; or

c. at such time as all of the residents in the facility have been provided alternative modes of care, either in another facility or otherwise; provided, that the residents shall not be removed from the facility unless it is required for the protection of the health, safety or welfare of the residents.

(ii) At the time of termination of the receivership, the receiver shall render a full and complete accounting to the court and shall dispose of any profit or surplus money at the direction of the court.

(f) (i) Any person who is served a copy of an order of the court appointing the receiver shall, upon being notified of the name and address of the receiver, make all payments for goods supplied by the facility, or services rendered by the facility, to the receiver. A receipt shall be given for each such payment, and copies of all such receipts shall be kept on file by the receiver. The amount so received shall be deposited by the receiver in a special account which shall also be used for all disbursements made by the receiver.

(ii) Any person refusing or omitting to make such a payment after such service and notice may be sued therefor by the receiver. Such person shall not in such suit dispute the authority of the receiver to incur or order such expenses, or the right of the receiver to have such payments made to him. The receipt of the receiver for any sum paid to him shall, in all suits and proceedings and for every purpose, be as effectual in favor of any person holding the same as actual payment of the amount thereof to the owner or other person or persons who would, but for the provisions of this subdivision, have been entitled to receive the sum so paid. No resident shall be discharged, nor shall any contract or rights be forfeited or impaired, nor any forfeiture or liability be incurred, by reason of any omission to pay any owner, contractor or other person any sum so paid to the receiver.

(g) Any other provision of this chapter notwithstanding, the department may, if it deems appropriate, grant to any facility operating

or scheduled to operate under a receivership authorized by this subdivision an operating certificate the duration of which shall be limited to the duration of the receivership.

(h) (i) No provision contained herein shall be deemed to relieve the operators, owners or prime lessors, if any, of any civil or criminal liability or obligation incurred, or any duty imposed by law, by reason of acts or omissions of such persons prior to the appointment of any receiver hereunder. During the period a facility is operated by a receiver, the operator, owner or prime lessor, if any, shall continue to be liable for all obligations for the payment of taxes or other operating and maintenance expenses of the facility and the owner or other appropriate person shall continue to be liable for the payment of mortgages or liens.

(ii) Expenses incurred by a receiver to meet the operating and maintenance expenses of the facility and the basic needs of the residents of the facility shall be deemed the obligations of the operator, and not the obligation of the receiver or the state.

(iii) The receiver shall not be responsible for any obligations incurred by the owner, operator or prime lessor, if any, prior to the appointment of the receiver.

(iv) The receiver shall be entitled to use for operating and maintenance expenses and the basic needs of the residents of the facility a portion of the revenues due the operator during the month in which the receiver is appointed which portion shall be established on the basis of the amounts of the operating and maintenance expenses for such month.

(v) Any sums determined to be due and owing by the receiver to the owner, operator or prime lessor shall be off-set by any charges determined to be the obligations of the owner, operator or prime lessor.

5. (a) Subject to paragraph (c) of this subdivision, the commissioner is authorized to make payments to receivers appointed pursuant to the provisions of subdivision three of this section, only if the receiver demonstrates to the satisfaction of the commissioner that the facility's funds which are available are insufficient to meet operating and maintenance expenses of the facility and the basic needs of the residents of the facility.

(b) The operator of a facility operated by a receiver pursuant to the provisions of subdivision three of this section shall be liable for all monies made available to the receiver pursuant to the provisions of paragraph (a) of this subdivision.

(c) To the extent funds are appropriated, payments made pursuant to this section shall be made from the local assistance fund and such payments shall be made only if a certificate of allocation and a schedule of amounts to be available therefor shall have been issued by the director of the budget, upon the recommendation of the commissioner of social services, and a copy of such certificate filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget, upon the recommendation of the commissioner of social services, and a copy of each such amendment shall be filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

(d) Any payments made by the department to a receiver pursuant to the provisions of this section shall be made without any obligation on the part of the social services district in which the receiver-operated facility is located to reimburse the department for any such payments.

6. Nothing contained in this section shall be construed to require the commissioner to seek the appointment of a receiver or to assume the responsibilities of a receiver directly or indirectly through his designee; nor shall this section authorize any court to compel the commissioner to assume the responsibilities of a receiver or to appoint a designee to assume such responsibilities.

§ 461-g. Termination of admission agreements. 1. No adult home, residence for adults or enriched housing program which is subject to certification and supervision of the department shall terminate the admission agreement of any resident of such facility and involuntarily discharge him therefrom except for the following reasons:

(a) the need of the resident for continual medical or nursing care which the adult home, residence for adults or enriched housing program

cannot provide;

(b) behavior of the resident which poses imminent risk of death or imminent risk of serious physical harm to such resident or any other person;

(c) failure of the resident to make timely payment for all authorized charges, expenses and other assessments, if any, for services including use and occupancy of the premises, materials, equipment and food which the resident has agreed to pay pursuant to the resident's admission and services agreement;

(d) repeated behavior of the resident which directly impairs the well-being, care or safety of the resident or any other resident or which substantially interferes with the orderly operation of the facility;

(e) the facility has had its operating certificate limited, revoked or temporarily suspended pursuant to subdivision four of section four hundred sixty-d of this article, or the operator has voluntarily surrendered the operating certificate for the facility to the department; or

(f) a receiver has been appointed pursuant to the provisions of section four hundred sixty-one-f of this article and, as required by such section, is providing for the orderly transfer of all residents in the facility to other facilities or is making other provisions for the residents' continued safety and care.

2. (a) No admission agreement shall be terminated and no resident of an adult home, residence for adults or enriched housing program involuntarily discharged for the reasons stated in paragraphs (a), (b), (c), (d) or (e) of subdivision one of this section unless: (i) the operator gives at least thirty days written notice, on a form prescribed by the department, to the resident, the resident's next of kin and the person designated in the admission agreement as the responsible party, if any, that the resident's admission agreement will be terminated and the resident discharged; (ii) such notice contains the reason for the termination of the admission agreement, the date that the discharge will occur, a statement that the resident has a right to object to the termination of the resident's admission agreement and subsequent discharge, and a statement that if the resident does not leave the

facility voluntarily, the operator, in order to terminate the admission agreement and discharge the resident, will be required to originate a proceeding pursuant to the provisions of section four hundred sixty-one-h of this article; (iii) the operator furnishes to the resident a list of free legal services agencies within the facility's geographical area and a list of other available community resources which provide resident advocacy services, including the social services district, which lists shall be provided to the operator by the department; and (iv) the operator institutes a special proceeding in accordance with the provisions of section four hundred sixty-one-h of this article.

(b) No admission agreement shall be terminated and the resident of an adult home, residence for adults or enriched housing program involuntarily discharged for the reason stated in paragraph (c) of subdivision one of this section, if the reason that the resident failed to pay the authorized charges was an interruption in the receipt by such resident of any public benefits to which such resident is entitled, unless the operator of the facility, during the thirty day notice period provided for in subparagraph (i) of paragraph (a) of this subdivision, as part of the provision of case management services, assists the resident, who shall cooperate with the operator, in attempting to obtain such public benefits or any supplemental public benefits which are available to persons who have not received their regular public benefits.

(c) The admission agreement of a resident in an enriched housing program may be terminated and the resident discharged pursuant to the provisions of this section and section four hundred sixty-one-h of this article; provided, however, where such resident has an existing lease with the landlord of the premises in which the program is housed, the resident may not be involuntarily removed from the premises pursuant to this section and section four hundred sixty-one-h of this article, except in accordance with the provisions of such lease and applicable law and regulation.

3. (a) Nothing in this section shall prohibit: (i) the removal of a resident from a facility, for medical treatment or care, to a hospital, nursing home or residential health care facility, as defined in section

twenty-eight hundred one of the public health law, or to a hospital as defined in section 1.03 of the mental hygiene law; or (ii) the removal from the facility of a resident whose behavior poses an imminent risk of death or imminent risk of serious physical harm to such resident or any other person, by a peace officer, acting pursuant to his special duties, or a police officer, who is a member of an authorized police department or force or a sheriff's department; or (iii) the removal from the facility of a resident, whose behavior poses an imminent risk of death or imminent risk of serious physical harm, to a location which ensures the resident's safety, pursuant to regulations of the department.

(b) Such removal shall not be deemed to be a termination of the admission agreement. Such removal shall not relieve the operator of the facility from the requirement of proceeding, subsequent to the removal of the resident, in accordance with this section and section four hundred sixty-one-h of this article in order to terminate the admission agreement to prevent the resident from returning to the facility. When an operator proceeds subsequent to the removal of the resident from the facility, to terminate the admission agreement, the written notice required to be given to the resident by subparagraph (i) of paragraph (a) of subdivision two of this section shall be personally delivered to the resident at the location to which he has been removed. If personal delivery is not possible, then such notice shall be served upon the resident by any of the methods permitted by section three hundred eight of the civil practice law and rules.

§ 461-h. Special proceeding for termination of adult home, residence for adults and enriched housing program admission agreements. 1. (a) A special proceeding to terminate the admission agreement of a resident of an adult home, residence for adults or enriched housing program and discharge the resident therefrom may be maintained in the county court, the justice court of the village, the town justice court, the court of civil jurisdiction in a city, or the district court which has jurisdiction over proceedings brought pursuant to article seven of the real property actions and proceedings law.

(b) The place of trial of the special proceeding shall be within the jurisdictional area of the court in which the adult home or residence

for adults is situated; except that where the facility is located in an incorporated village which includes parts of two or more towns, the proceeding may be tried by a town justice of any such town who keeps an office in the village.

2. The proceeding may be brought by the operator of an adult home, residence for adults or enriched housing program.

3. (a) The special proceeding prescribed by this section shall be commenced by petition and a notice of petition. A notice of petition may be issued only by an attorney, judge or the clerk of the court; it may not be issued by a party prosecuting the proceeding in person.

(b) The notice of petition shall specify the time and place of the hearing on the petition.

4. The notice of petition and petition shall be served at least five and not more than twelve days before the time at which the petition is noticed to be heard.

5. (a) Service of the notice of petition and petition shall be made by personally delivering them to the resident; and at the time of such service, a copy of such notice of petition and petition shall be mailed to the resident's next of kin and to the person designated in the admission agreement as the responsible party, if any, and the department. If service by personal delivery of the notice of petition and petition upon a resident, who has been removed from the facility as permitted by subdivision three of section four hundred sixty-one-g of this article, is not possible, then service upon such resident shall be made by any of the methods permitted by section three hundred eight of the civil practice law and rules.

(b) The notice of petition and petition together with proof of service thereof on the resident and proof that copies thereof have been mailed to the resident's next of kin and to the person designated in the admission agreement as the responsible party, if any, shall be filed with the court or clerk thereof within three days after delivery to the resident.

(c) Service shall be complete upon filing proof of service.

6. The petition shall be verified by the person authorized by subdivision two of this section to maintain the proceeding; or by a legal representative, attorney or agent of such person pursuant to subdivision (d) of section thirty hundred twenty of the civil practice law and rules.

Every petition shall:

- (a) state the interest of the petitioner in the premises from which removal is sought;
- (b) state the resident's interest in the premises and his relationship to petitioner with regard thereto;
- (c) describe the premises from which removal is sought;
- (d) state the facts upon which the special proceeding is based; and
- (e) state the relief sought. The relief may include a judgment for payment of all charges, expenses and other assessments due.

7. The resident may answer in writing prior to the date the petition is to be heard or orally at the time the petition is heard. The resident may interpose any defense that he may have in his answer.

8. If the relief sought by the operator includes a judgment for payment of all charges, expenses and other assessments due, then any counterclaims which the resident may have against the operator may be heard in a special proceeding maintained pursuant to the provisions of this section, provided, however, that the court in its discretion may sever such claims and counterclaims from the special proceeding.

9. Where triable issues of fact are raised, they shall be tried by the court. The court, in its discretion, at the request of one or both of the parties may grant an adjournment for not more than ten days.

10. (a) The court shall direct that a final judgment be entered determining the rights of the parties with regard to the admission agreement.

(b) The judgment, including such money as it may award for use and occupancy of the facility or otherwise, may be docketed in such books as

the court maintains for recording the steps in a summary proceeding; unless a rule of the court, or the court by order in a given case otherwise provides, such judgment need not be recorded or docketed in the books, if separately maintained in which are docketed money judgments in an action.

11. (a) Upon rendering a final judgment for petitioner, the court shall issue an order of removal directed to the sheriff of the county or to any constable or marshal of the city in which the facility is situated, or, if it is not situated in a city to any constable of any town in the county, describing the property, and commanding the officer to remove the resident.

(b) The officer to whom the order of removal is directed and delivered shall give at least seventy-two hours notice, in writing and in the manner prescribed in this section for the service of a notice of petition, to the person to be removed and shall execute the order between the hours of sunrise and sunset.

12. (a) If a proceeding is brought by an operator of an adult home, residence for adults or enriched housing program pursuant to the provisions of this section and the reason for the proceeding is that a resident of such a facility has not paid the authorized charges, the court shall stay the issuance of the order of removal for ten days from the date a judgment is rendered. The court, in its discretion, may stay the issuance of an order of removal for up to ninety days if the reason for the termination of the admission agreement and discharge of the resident is that the resident failed to pay the authorized charges and such nonpayment was due to an interruption by a government agency in the delivery to such resident of any public benefits to which such resident is entitled. During the pendency of such stay, the operator of the facility, as part of the provision of case management services shall be required to assist the resident who shall cooperate with the operator, in obtaining any such public benefits or any supplemental public benefits which are available to persons who have not received their regular public benefits.

(b) If a proceeding is brought by an operator of an adult home, residence for adults or enriched housing program pursuant to the

provisions of this section, and the reason for the proceeding is repeated behavior by the resident which directly impairs the well-being, care or safety of the resident or any other resident or which substantially interferes with the orderly operation of the facility, the court, in its discretion, upon application of the resident, may stay the issuance of the order of removal for up to thirty days from the date a judgment is rendered.

(c) If a proceeding is brought by an operator, administrator or receiver of an adult home, residence for adults or enriched housing program pursuant to the provisions of this section, and the reason for the proceeding is that the facility has had its operating certificate revoked or temporarily suspended pursuant to subdivision four of section four hundred sixty-d of this article, or the operator has voluntarily surrendered the operating certificate for the facility to the department, the court, in its final judgment entered pursuant to subdivision ten of this section, shall not direct the facility to remain open and in operation.

13. During the pendency of a special proceeding brought pursuant to this section, the operator of an adult home, residence for adults or enriched housing program shall be required to honor all terms of the admission agreement until the resident is removed.

14. Nothing contained herein shall be deemed to alter or abridge any right of a resident or operator of an adult home, residence for adults or enriched housing program to obtain any relief to which such persons are entitled in any other court of competent jurisdiction.

15. Notwithstanding the provisions of this article, nothing contained herein shall be construed to create a relationship of landlord and tenant between an operator of an adult home, residence for adults or enriched housing program and a resident thereof.

16. Notwithstanding any other provision in this section to the contrary, the admission agreement of a resident in an enriched housing program may be terminated and the resident discharged pursuant to the provisions of section four hundred sixty-one-g of this article and

pursuant to a special proceeding as set forth in this section; provided, however, where such resident has an existing lease with the landlord of the premises in which the program is housed, the resident may not be involuntarily removed from the premises except in accordance with the provisions of such lease and applicable law and regulation.

§ 461-i. Planning and development grants for enriched housing programs. 1. The department shall, to the extent funds are available for such purpose, award planning and development grants to, and contract with, lawfully approved enriched housing programs that qualify for such grants under criteria to be established by the department. Such grants shall be made for the purposes of defraying start-up expenses and reducing initial operating deficits incurred in the first twelve months of a program's operations resulting from initial low occupancy rates. Use of such funds may include, but shall not be limited to, paying for rent prior to occupancy and security deposits, administrative expenses, minor renovations of existing structures, furnishings and household equipment, moving expenses of residents and reasonable anticipated operating deficits resulting from low initial occupancy rates.

2. Any public agency, public corporation or not-for-profit corporation who has filed an application for approval to operate an enriched housing program, or any lawfully approved enriched housing operator, may make application for a planning and development grant in a manner and form prescribed by the department. The department shall make determinations of award for each application for such grants at such time that a final determination is made with respect to approving the establishment of, or granting an operating certificate for, an enriched housing program. The department shall award planning and development grants on the basis of the quality of the proposed program, the applicant's financial needs, the geographic distribution of enriched housing programs, and the availability of, and demand for, long-term care services in the geographic area to be served by the proposed program.

3. The department may award planning and development grants to, and contract with, lawfully approved enriched housing programs under

criteria to be established by the department for the purpose of moderate renovations or modifications of existing structures when determined to be necessary by the commissioner. Use of such grants for moderate structural renovations or modifications shall be deemed necessary in those instances where the commissioner determines that, without such renovations or modifications, a geographic area may be underserved because of the lack of available or suitable existing structures.

§ 461-j. Family type homes for adults; special needs funds. 1. The commissioner shall establish a procedure whereby payments shall be made to duly certified operators of family type homes for adults for the purpose of meeting one or more of certain special needs of persons residing in such facilities and properly receiving or eligible to receive supplemental security income, additional state payments or safety net assistance benefits, as follows:

(a) Payments to be used for necessary clothing, recreation, transportation and cultural activities of specified individual residents shall not exceed two hundred ninety dollars per resident per year.

(b) Payments to be used for provision of substitute care to residents during periods of emergency and scheduled absence of operators, including periods of operator absence for the purposes of education and training, shall not exceed five hundred dollars per facility per year.

(c) Payments to be used for health and safety equipment shall not exceed seventy-five dollars per facility per year.

2. Social services districts shall establish a separate account for special needs funds and shall administer payments to operators out of said account, in accordance with regulations which shall be promulgated by the department. The department shall pay district costs out of available appropriations for such purposes, to the extent of one hundred percent of the amount expended pursuant to subdivision one of this section, in accordance with the provisions of section one hundred fifty-three of this chapter. In addition, the department shall, in accordance with the provisions of section one hundred fifty-three of this chapter, reimburse one hundred percent of amounts expended by each district for administration under this section only to the extent of ten

percent of the amount paid by such district pursuant to subdivision one of this section, and shall thereafter reimburse fifty percent of any additional amounts paid by such district for such administrative costs. The department may make advances to districts which shall then advance such funds to duly certified operators, to the extent provided for by department regulations, in anticipation of costs incurred in meeting the special needs as set forth in subdivision one of this section and related administrative costs in accordance with the procedure established by the commissioner. Nothing contained in this section shall be construed to require expenditures by any district pursuant to subdivision one of this section, in excess of the amounts made available to the district by the department pursuant to this section.

3. Notwithstanding any other provision of law, state reimbursement to districts may be made only from and to the extent of moneys appropriated to the department for such purposes.

4. The department shall audit payments and maintenance of accounts in accordance with department regulations. The commissioner shall promulgate regulations to carry out the purposes of this section.

*** § 461-k. Services for non-residents in certain adult care facilities.** 1. (a) "Services for non-residents in adult homes, residences for adults and enriched housing programs" shall mean an organized program of services which the facility is authorized to provide to residents of such facility but which are provided to non-residents for the purpose of restoring, maintaining or developing the capacity of aged or disabled persons to remain in or return to the community. Such services may include but shall not be limited to day programs and temporary residential care as defined herein. A person participating in a program of services for non-residents in an adult care facility shall be considered a resident of the facility and shall be afforded all the rights and protections afforded residents of the facility under this chapter except that the provisions of sections four hundred sixty-one-g and four hundred sixty-one-h of this title relating to termination of admission agreements shall not apply and that persons

receiving services pursuant to this section shall not be considered to be receiving residential care as defined in section two hundred nine of this chapter for purposes of determining eligibility for and the amount of supplemental security income benefits and additional state payments.

(b) "Day programs" shall mean an organized program for non-residents which shall include personal care, supervision and other adult services which the facility is authorized to provide to residents of such facility which may include but are not limited to, activities, meals, information and referral, and transportation services, provided in an adult home, residence for adults or enriched housing program.

(c) "Temporary residential care" shall mean the provision of temporary residential care of frail or disabled adults on behalf of or in the absence of the caregiver for up to one hundred twenty days in any twelve month period, provided in an adult home, residence for adults or enriched housing program.

2. A program to provide services for non-residents in an adult care facility may be established and operated in an adult home, residence for adults or enriched housing program provided that such facility has a current operating certificate issued in accordance with section four hundred sixty-one-b of this title. No operator may establish and operate a day program to provide services for non-residents, as defined in subparagraph (b) of subdivision one of this section, unless the operator has received the prior written approval of the department. The department shall grant such approval to operate a day program only to those operators that are operating in compliance with applicable law and regulations. No operator may provide temporary residential care as defined in subparagraph (c) of subdivision one of this section, unless the operator has notified the department of its intent to do so.

3. Every program of services for non-residents must be established and operated in a manner designed to ensure that such program neither impairs the effective operation of the facility nor lessens the quality of care provided to the facility residents.

4. The department shall promulgate regulations to carry out the purposes of this section, including, but not limited to, provisions

regarding certification, inspection, supervision, enforcement, penalties, records and reports, public need, fiscal, administrative, architectural, safety, nutrition, duration of service, program standards, information and referral, admission and discharge standards, written service agreements for day services programs and modified admission agreements for temporary residential care programs and operator responsibility for services and supervision. The department shall have authority to enforce such regulations in the same manner and to the extent it has authority to enforce regulations promulgated pursuant to sections four hundred sixty-a through four hundred sixty-f and sections four hundred sixty-one through four hundred sixty-one-e of this article.

5. The department may waive the determination of public need when an adult care facility is requesting approval to utilize no more than five beds or five percent of its certified capacity, whichever is less, for temporary residential care.

* NB Expires July 1, 2029

§ 461-1. Assisted living program. 1. Definitions. As used in this section, the following words shall have the following meanings:

(a) "Assisted living program" means an entity or entities with identical ownership, which are approved to operate pursuant to subdivision three of this section and possesses a valid operating certificate as an adult care facility, other than a shelter for adults, a residence for adults or a family type home for adults, issued pursuant to this article and which possesses either: (i) a valid license as a home care services agency issued pursuant to section thirty-six hundred five of the public health law; or (ii) a valid certificate of approval as a certified home health agency issued pursuant to section thirty-six hundred six of the public health law; or (iii) valid authorization as a long term home health care program issued pursuant to section thirty-six hundred ten of the public health law.

(b) "Capitated rate of payment" means the rate established pursuant to subdivision six of section thirty-six hundred fourteen of the public health law.

(c) "Eligible applicant" means:

(i) A single entity that is:

(A) only a natural person or partnership composed only of natural persons, a not-for-profit corporation, a public corporation, a business corporation other than a corporation whose shares are traded on a national securities exchange or are regularly quoted on a national over-the-counter market or a subsidiary of such a corporation or a corporation any of the stock of which is owned by another corporation, a limited liability company provided that if a limited liability company has a member that is a corporation, a limited liability company or a partnership, the shareholders of the member corporation, the members of the member limited liability company, or the partners of the member partnership must be natural persons, a social services district or other governmental agency which possesses or is eligible pursuant to this article to apply for an adult care facility operating certificate; and

(B) either: (1) an entity which possesses or is eligible pursuant to article thirty-six of the public health law to apply for licensure as a home care services agency; (2) an entity which possesses valid authorization as a long term home health care program; or (3) an entity which possesses a valid certificate of approval as a certified home health agency pursuant to article thirty-six of the public health law; or

(ii) One or more entities listed in subparagraph (i) of this paragraph with identical owners that, in combination, meet each of the criteria set forth by subparagraph (i) of this paragraph.

(d) "Eligible person" means a person who:

(i) requires more care and services to meet his or her daily health or functional needs than can be directly provided by an adult care facility and although medically eligible for placement in a residential health care facility, can be appropriately cared for in an assisted living program and who would otherwise require placement in a residential health care facility due to factors which may include but need not be limited to the lack of a home or a home environment in which to live and receive services safely; and

(ii) is categorized by the long-term care patient classification system as defined in regulations of the department of health as a person who has a stable medical condition and who is able, with direction, to

take action sufficient to assure self-preservation in an emergency. In no event shall an eligible person include anyone in need of continual nursing or medical care, a person who is chronically bedfast, or anyone who is cognitively, physically or medically impaired to such a degree that his or her safety would be endangered.

(e) "Services" shall mean all services for which full payment to an assisted living program is included in the capitated rate of payment, which shall include personal care services, home care services and such other services as the commissioner in conjunction with the commissioner of health determine by regulation must be included in the capitated rate of payment, and which the assisted living program shall provide, or arrange for the provision of, through contracts with a social services district, long term home health care programs, certified home health agencies, and other qualified providers.

2. General requirements. (a) Applicability. Unless expressly provided otherwise in this article or article thirty-six of the public health law, an assisted living program shall be subject to any other law, rule or regulation governing adult care facilities, long term home health care programs, certified home health agencies, licensed home care agencies or personal care services.

(b) If an assisted living program itself is not a certified home health agency or long term home health care program, the assisted living program shall contract with one or more certified home health agencies and/or long term home health care programs for the provision of services pursuant to article thirty-six of the public health law.

(c) Participation by eligible persons. Participation in an assisted living program by an eligible person shall be voluntary and eligible persons shall be provided with sufficient information regarding the program to make an informed choice concerning participation.

(d) Patient services and care. (i) An assisted living program shall, either directly or through contract with a long term home health care program or certified home health agency, conduct an initial assessment to determine whether a person would otherwise require placement in a residential health care facility if not for the availability of the assisted living program and is appropriate for admission to an assisted living program.

(ii) No person shall be determined eligible for and admitted to an assisted living program unless the assisted living program finds that the person meets the criteria provided in paragraph (d) of subdivision one of this section.

(iii) Appropriate services shall be provided to an eligible person only in accordance with a plan of care which is based upon an initial assessment and periodic reassessments conducted by an assisted living program, either directly or through contract with a long term home health care program or certified home health agency. A reassessment shall be conducted as frequently as is required to respond to changes in the resident's condition and ensure immediate access to necessary and appropriate services by the resident, but in no event less frequently than once every six months. No person shall be admitted to or retained in an assisted living program unless the person can be safely and adequately cared for with the provision of services determined by such assessment or reassessment.

(iv) Eligible individuals shall be permitted to receive hospice services from a provider under article forty of the public health law while continuing to reside in an adult care facility under this title and enrolled in the assisted living program, subject to the availability of federal financial participation. The commissioner shall make regulations and take other actions reasonably necessary and appropriate to implement this subparagraph.

(e) Medical evaluations. Medical evaluations used to determine that the assisted living program can support the physical, supervisory and psycho-social needs of a resident must be conducted within thirty days prior to the date of admission and signed by either a physician, physician assistant or nurse practitioner.

3. Assisted living program approval. (a) An eligible applicant proposing to operate an assisted living program shall submit an application to the department. Upon receipt, the department shall transmit a copy of the application and accompanying documents to the department of health. Such application shall be in a format and a quantity determined by the department and shall include, but not be limited to:

(i) a copy of or an application for an adult care facility operating

certificate;

(ii) a copy of or an application for a home care services agency license or a copy of a certificate for a certified home health agency or authorization as a long term home health care program;

(iii) a copy of a proposed contract with a social services district or in a social services district with a population of one million or more, a copy of a proposed contract with the social services district or the department;

(iv) if the applicant is not a long term home health care program or certified home health agency, a copy of a proposed contract with a long term home health care program or certified home health agency for the provisions of services in accordance with article thirty-six of the public health law; and

(v) a detailed description of the proposed program including budget, staffing and services.

(b) If the application for the proposed program includes an application for licensure as a home care service agency, the department of health shall forward the application for the proposed program and accompanying documents to the public health and health planning council for its written approval in accordance with the provisions of section thirty-six hundred five of the public health law.

(c) An application for an assisted living program shall not be approved unless the commissioner is satisfied as to:

(i) the character, competence and standing in the community of the operator of the adult care facility;

(ii) the financial responsibility of the operator of the adult care facility;

(iii) that the buildings, equipment, staff, standards of care and records of the adult care facility to be employed in the operation comply with applicable law, rule and regulation;

(iv) the commissioner of health is satisfied that the licensed home care agency has received the written approval of the public health and health planning council as required by paragraph (b) of this subdivision and the equipment, personnel, rules, standards of care, and home care services provided by the licensed home care agency and certified home health agency or long term home health care program are fit and adequate and will be provided in the manner required by article thirty-six of the

public health law and the rules and regulations thereunder; and

(v) the commissioner and the commissioner of health are satisfied as to the public need for the assisted living program.

(d) The department shall not approve an application for an assisted living program for any eligible applicant who does not meet the requirements of this article, including but not limited to, an eligible applicant who is already or within the past ten years has been an incorporator, director, sponsor, principal stockholder, member or owner of any adult care facility which has been issued an operating certificate by the board or the department, or of a halfway house, hostel or other residential facility or institution for the care, custody or treatment of the mentally disabled which is subject to approval by an office of the department of mental hygiene, or of any residential health care facility or home care agency as defined in the public health law, unless the department, in conjunction with the department of health, finds by substantial evidence as to each such applicant that a substantially consistent high level of care has been rendered in each such facility or institution under which such person is or was affiliated. For the purposes of this paragraph, there may be a finding that a substantially consistent high level of care has been rendered despite a record of violations of applicable rules and regulations, if such violations (i) did not threaten to directly affect the health, safety or welfare of any patient or resident, and (ii) were promptly corrected and not recurrent.

(e) The commissioner of health shall provide written notice of approval or disapproval of portions of the proposed application concerning a licensed home care agency, certified home health agency or long term home health care program, and, where applicable, of the approval or disapproval of the public health and health planning council to the commissioner. If an application receives all the necessary approvals, the commissioner shall notify the applicant in writing. The commissioner's written approval shall constitute authorization to operate an assisted living program.

(f) No assisted living program may be operated without the written approval of the department, the department of health and, where applicable, the public health and health planning council.

(g) Notwithstanding any other provision of law to the contrary, any

assisted living program having less than seventy-five authorized bed slots, located in a county with a population of more than one hundred ten thousand and less than one hundred fifty thousand persons based upon the decennial federal census for the year two thousand, and which at any point in time is unable to accommodate individuals awaiting placement into the assisted living program, shall be authorized to increase the number of assisted living beds available for a specified period of time as part of a demonstration program by up to thirty percent of its approved bed level; provided, however, that such program shall otherwise satisfy all other assisted living program requirements as set forth in this section. In addition, any program which receives such authorization and which at any point on or after July first, two thousand five is unable to accommodate individuals awaiting placement into the assisted program, shall be authorized to further increase the number of assisted living beds available as part of this demonstration program by up to twenty-five percent of its bed level as of July first, two thousand five; provided, however, that such program shall otherwise satisfy all other assisted living program requirements as set forth in this section.

(h) The commissioner is authorized to add one thousand five hundred assisted living program beds to the gross number of assisted living program beds having been determined to be available as of April first, two thousand seven.

(i) (a) The commissioner of health is authorized to add up to six thousand assisted living program beds to the gross number of assisted living program beds having been determined to be available as of April first, two thousand nine. Nothing herein shall be interpreted as prohibiting any eligible applicant from submitting an application for any assisted living program bed so added. The commissioner of health shall not be required to review on a comparative basis applications submitted for assisted living program beds made available under this paragraph. The commissioner of health shall only authorize the addition of six thousand beds pursuant to a seven year plan ending prior to January first, two thousand seventeen.

(b) The commissioner of health shall provide an annual written report to the chair of the senate standing committee on health and the chair of the assembly health committee no later than January first of each year. Such report shall include, but not be limited to, the number of assisted

living program beds made available pursuant to this section by county, the total number of assisted living program beds by county, the number of vacant assisted living program beds by county, and any other information deemed necessary and appropriate.

(j) The commissioner of health is authorized to add up to four thousand five hundred assisted living program beds to the gross number of assisted living program beds having been determined to be available as of April first, two thousand twelve. Applicants eligible to submit an application under this paragraph shall be limited to adult homes established pursuant to section four hundred sixty-one-b of this article with, as of September first, two thousand twelve, a certified capacity of eighty beds or more in which twenty-five percent or more of the resident population are persons with serious mental illness as defined in regulations promulgated by the commissioner of health. The commissioner of health shall not be required to review on a comparative basis applications submitted for assisted living program beds made available under this paragraph.

(k) (i) Existing assisted living program providers may apply to the department of health for approval to add up to nine additional assisted living program beds that do not require major renovation or construction. Eligible applicants are those that agree to dedicate such beds to serve only individuals receiving medical assistance, are in good standing with the department of health, and are in compliance with appropriate state and local requirements as determined by the department of health.

(ii) Existing assisted living program providers licensed on or before April first, two thousand eighteen may submit applications under this paragraph beginning no later than June thirtieth, two thousand eighteen and until a deadline to be determined by the department of health. Existing assisted living program providers licensed on or before April first, two thousand twenty may submit such applications beginning no later than June thirtieth, two thousand twenty and until a deadline to be determined by the department of health.

(iii) The number of additional assisted living program beds approved under this paragraph shall be based on the total number of previously awarded beds either withdrawn by applicants or denied by the department of health. The commissioner of health shall utilize an expedited review

process allowing certification of the additional beds within ninety days of such department's receipt of a satisfactory application.

(l) (i) The commissioner of health is authorized to solicit and award applications for up to a total of five hundred new assisted living program beds in those counties where there is one or no assisted living program providers, pursuant to criteria to be determined by the commissioner.

(ii) The commissioner of health is authorized to solicit and award applications for up to five hundred new assisted living program beds in counties where utilization of existing assisted living program beds exceeds eighty-five percent. All applicants shall comply with federal home and community-based settings requirements, as set forth in 42 CFR Part 441 Subpart G. To be eligible for an award, an applicant must agree to:

(A) Dedicate such beds to serve only individuals receiving medical assistance;

(B) Develop and execute collaborative agreements within twenty-four months of an application being made to the department of health, in accordance with guidance to be published by such department, between at least one of each of the following entities: an adult care facility; a residential health care facility; and a general hospital; and

(C) Enter into an agreement with an existing managed care entity.

(iii) The commissioner of health is authorized to award any assisted living program beds for which a solicitation is made under subparagraph (i) of this paragraph, but which are not awarded, to applicants that meet all applicable criteria pursuant to a solicitation made under subparagraph (ii) of this paragraph.

(m) Beginning April first, two thousand twenty-five, additional assisted living program beds shall be approved on a case by case basis whenever the commissioner of health is satisfied that public need exists at the time and place and under circumstances proposed by the applicant.

(i) The consideration of public need may take into account factors such as, but not limited to, regional occupancy rates for adult care facilities and assisted living program occupancy rates and the extent to which the project will serve individuals receiving medical assistance.

(ii) Existing assisted living program providers may apply for approval to add up to nine additional assisted living program beds that do not

require major renovation or construction under an expedited review process. The expedited review process is available to applicants that are in good standing with the department of health, and are in compliance with appropriate state and local requirements as determined by the department of health. The expedited review process shall allow certification of the additional beds for which the commissioner of health is satisfied that public need exists within ninety days of such department's receipt of a satisfactory application.

(n) The commissioner of health is authorized to create a program to subsidize the cost of assisted living for those individuals living with Alzheimer's disease and dementia who are not eligible for medical assistance pursuant to title eleven of article five of this chapter and reside in a special needs assisted living residence certified under section forty-six hundred fifty-five of the public health law. Subject to appropriations, the program shall authorize vouchers to individuals through an application process and pay for up to seventy-five percent of the average private pay rate in the respective region. The commissioner of health may propose rules and regulations to effectuate this provision.

4. Revocation, suspension, limitation or annulment. Authorization to operate an assisted living program may be revoked, suspended, limited or annulled by the commissioner in accordance with the provisions of this article if the adult care facility fails to comply with applicable provisions of this chapter or rules or regulations promulgated hereunder or by the commissioner of health in accordance with the provisions of article thirty-six of the public health law if the licensed home care service agency, certified home health agency or long term home health care program fails to comply with the provisions of article thirty-six of the public health law or rules or regulations promulgated thereunder.

5. Rules and regulations. The commissioner and the commissioner of health shall jointly promulgate any rules and regulations necessary to effectuate the provisions and purposes of this section and section thirty-six hundred fourteen of the public health law. Such regulations shall provide that the department and the department of health shall coordinate their surveillance and enforcement efforts, including but not

limited to, on-site surveys of assisted living programs.

6. Report. The commissioner and the commissioner of health shall submit a joint report to the governor, the temporary president of the senate, the speaker of the assembly, the state hospital review and planning council and health systems agencies on or before March first, nineteen hundred ninety-three which shall include a description of the programs, including the number of programs established and authorized by geographic area, the cost of the program, including the savings to state and local governments, the number of persons served by the program by geographic area, a description of the demographic and clinical characteristics of patients served by the program and an evaluation of the quality of care provided to persons served by the program. Such report shall be utilized by the department of health in estimating statewide need for long term care beds for the planning target year next succeeding nineteen hundred ninety-three. In addition, the state hospital review and planning council shall consider the results of such report in approving the methodology for determining statewide need for long term care beds for the planning target year next succeeding nineteen hundred ninety-three.

§ 461-m. Death and felony crime reporting. The operator of an adult home, enriched housing program or residence for adults shall have an affirmative duty to report any death, or attempted suicide of a resident to the department of health within twenty-four hours of its occurrence, and shall also have an affirmative duty to report to an appropriate law enforcement authority if the operator discovers an incident that the operator believes or reasonably should believe would constitute a felony crime against a resident of such facility as soon as possible, or in any event within twenty-four hours. In addition, the operator shall send any reports involving a resident who had at any time received services from a mental hygiene service provider to the justice center for the protection of people with special needs.

§ 461-o. Complaint investigation procedures. The department shall

establish procedures governing the receipt and investigation of complaints regarding the care afforded to residents of adult care facilities consistent with article eleven of this chapter, as applicable. Such procedures shall assure the confidentiality of the complainant. Such procedures shall include but not be limited to the procedures for reporting complaints, either in writing or orally to the department, and the time frames governing the investigation of any such complaints submitted to the department. Provided however, if any complaint alleges the abuse or neglect of a resident or involves an incident that exposes a resident to cruel or unsafe care or otherwise represents a serious resident care issue, the department shall ensure that an investigation of any such complaint is initiated immediately and in no event commenced less than seventy-two hours from the time such complaint is received by the department. Upon the conclusion of the investigation by the department the operator and the complainant shall be notified in writing of the results of such investigation or, as applicable, pursuant to article eleven of this chapter.

§ 461-p. Adult care facilities training program. The department may, within the amounts as appropriated for such purpose, establish an adult care facility training program that shall assist in the development of training materials and/or the provision of staff training activities. In developing such training program, the department shall determine the feasibility of providing such training on a statewide basis. The department may contract with organizations representing adult care facilities to provide such training. Such contracts shall require that funding made available through this program shall be used to enhance the skills of staff of adult care facilities and may include, but not be limited to training activities regarding medication management, safety and security procedures, rights of residents, behavioral management techniques, and any other training initiatives identified by the department.

§ 461-q. Temperature standards in adult homes, enriched housing programs and residences for adults. The commissioner of health shall

promulgate rules and regulations with respect to an allowable temperature in all areas occupied by residents of an adult home, enriched housing program and residence for adults, including any areas intended for use by its residents in common including auditoriums, meeting rooms and cafeterias. One common room in such adult home, enriched housing program and residence for adults shall be required to be air conditioned.

§ 461-r. Food services. 1. Food services in adult care facilities shall be provided in a manner that respects the dietary needs of the residents in relation to health conditions, food allergies and dietary intolerances, religious and ethnic mandates, and that allows for a reasonable variation in taste preferences.

2. Resident food committees in each facility, assembled from among the residents, shall have the freedom to meet and evaluate the food service available to them without interference, and shall advise the operators of the adult care facility as to issues of dietary needs, preferences, food quality and safety.

3. The commissioner of health shall review existing adult care facility regulations and amend existing regulations or promulgate new regulations if appropriate, to determine those food service personnel in adult care facilities that should undergo training appropriate for the level of food service which they may perform, including but not limited to sanitation in the food preparation and service areas; refrigeration and preservation; principles of a balanced meal; and ordering with an emphasis on fresh foods.

§ 461-s. Enhancing the quality of adult living program for adult care facilities. 1. (a) The commissioner of health shall establish the enhanced quality of adult living program (referred to in this section as the "EQUAL program" or the "program") for adult care facilities. The program shall be targeted at improving the quality of life for adult care facility residents by means of grants to facilities for the

purposes set forth in subparagraphs (i) and (ii) of the paragraph. The department of health, subject to the approval of the director of the budget, shall develop an allocation methodology taking into account the financial status and size of the facility, resident needs and the population of residents who receive supplemental security income, state supplemental payments, Medicaid (with respect to residents in an assisted living program), or safety net assistance. On or before June first of each year, the department shall make available the application for EQUAL program funds. Grants may be used to support the following purposes:

(i) to improve the quality of life for adult care facility residents by funding projects including, but not limited to, clothing allowances, resident training to support independent living skills, improvements in food quality, outdoor leisure projects, and culturally recreational and other leisure events; and resident quality of life, pursuant to this subparagraph, and

(ii) to improve the quality of life for adult care facility residents by financing capital improvement projects that will enhance the physical environment of the facility and promote a higher quality of life for residents. Any capital related expense generated by such capital expenditure must receive approval by the department of health, provided however, that such expenditures shall not be used to supplant the obligations of the facility operator to provide a safe, comfortable environment for residents in a good state of repair and sanitation.

(b) On or before June first of each year, the department shall make available the application for EQUAL program funds to eligible adult care facilities, as set forth in this section.

2. No payment shall be made under the program to a facility that has received official written notice from the department of a proposed revocation, suspension, limitation or denial of the operator's operating certificate.

3. Prior to applying for EQUAL program funds, a facility shall receive approval of its expenditure plan from the residents' council for the facility. The residents' council shall adopt a process to identify the priorities of the residents for the use of the program funds and

document residents' top preferences by means that may include a vote or survey. The plan shall detail how program funds will be used to improve resident quality of life, pursuant to subparagraph (i) of paragraph (a) of subdivision one of this section, and support sustainable enhancements to the physical environment of the facility pursuant to subparagraph (ii) of paragraph (a) of this subdivision. The facility's application for EQUAL program funds shall include a signed attestation from the president or chair-person of the residents' council or, in the absence of a residents' council, at least three residents of the facility, stating that the application reflects the priorities of the residents of the facility. The department shall investigate reports of resident abuse and retaliation related to program applications and expenditures.

4. EQUAL program funds shall not be expended for a facility's daily operating expenses, including employee salaries or benefits, or for expenses incurred retrospectively, except that expenditures may be incurred prior to the approval of the facility's application for such fiscal year, provided that: (a) consistent with subdivision three of this section, the residents' council approves such expenditure prior to the expenditure being incurred, and the facility provides with its application documentation of such approval and the date thereof; and (b) the expenditure meets all applicable requirements pursuant to this section and is subsequently approved by the department. EQUAL program funds may be used for expenditures related to corrective action as required by an inspection report, provided such expenditure is consistent with subdivision three of this section.

§ 461-t. Review of criminal history information concerning prospective direct care employees. Every adult home, enriched housing program and residence for adults shall conduct a criminal history record check of prospective direct care employees utilizing the procedures and standards set forth in article twenty-eight-E of the public health law.

§ 461-u. Personal caregiving visitors for residents of adult care facilities during public health emergencies. 1. As used in this section,

the following terms have the following meanings:

(a) "personal caregiving visitor" means a family member, close friend, or legal guardian of a resident designated by the resident or the resident's lawful representative to assist with personal caregiving or compassionate caregiving for the resident;

(b) "personal caregiving" means care and support of a resident by a personal caregiving visitor that is provided to benefit such resident's mental, physical, or social well-being.

(c) "compassionate caregiving" means personal caregiving that is provided in anticipation of the end of a resident's life or in the instance of significant mental, physical, or social decline or crisis of a resident;

(d) "resident" means a resident of an adult care facility; in relation to a personal caregiving visitor, "resident" means the resident to whom a personal caregiving visitor has been designated to assist with personal caregiving or compassionate caregiving; and

(e) "visit" includes assisting with personal caregiving or compassionate caregiving for a resident.

2. During a public health emergency declared under section twenty-four or section twenty-eight of the executive law personal caregiving visitors may visit residents of adult care facilities, in compliance with federal law and regulations and state regulations made under this section. Adult care facilities shall admit any personal caregiving visitor who is in compliance with applicable requirements under this section.

3. The commissioner of the department responsible for the licensure or certification for each type of adult care facility shall make regulations for such type under this section which shall:

(a) require adult care facilities to allow personal caregiving visitors to visit residents subject to this section;

(b) set forth procedures for the designation of personal caregiving visitors by residents or resident's lawful representatives, which: (i) shall include documentation of each designated personal caregiving visitor in the facility records; (ii) shall include procedures to ensure that the preferences of the resident regarding the designation of a

personal caregiving visitor are respected; and (iii) may include, in appropriate circumstances, requiring a health or mental health professional licensed or certified under the education law to state that the personal caregiving will substantially benefit the resident's mental, physical, or social well-being. An adult care facility shall not require that a health or mental health professional be affiliated with such adult care facility;

(c) set forth procedures for changing a personal caregiving visitor designation;

(d) provide that a resident shall be entitled to designate at least two personal caregiving visitors;

(e) provide that personal caregiving visitors shall be exempt from prohibitions on visiting residents at adult care facilities, subject to the limitations and requirements of this section;

(f) set forth the circumstances under which visiting by personal caregiving visitors may be temporarily limited or suspended at an adult care facility to protect the health, safety and welfare of residents, including, but not limited to, local infection rates, temporary inadequate staff capacity, or an acute emergency situation;

(g) require, at a minimum, that all personal caregiving visitors follow safety protocols which may include, but need not be limited to:

(i) testing for communicable diseases;

(ii) checking body temperature upon entry into the adult care facility;

(iii) health screenings upon entry into the adult care facility;

(iv) appropriate use of personal protective equipment;

(v) social distancing (except as necessary for personal caregiving by the personal caregiving visitor for a resident); and

(vi) any other requirement the respective commissioner deems appropriate;

(h) set forth standards for frequency and duration of visits by personal caregiving visitors at adult care facilities;

(i) set forth standards for limiting the total number of personal caregiving visitors for a resident and/or limiting the total number of personal caregiving visitors allowed to visit an adult care facility at any one time based on the circumstances of the residents and the adult care facility;

(j) require personal caregiving and compassionate caregiving to be documented in the resident's case management notes; and

(k) make appropriate provisions for compassionate caregiving.

4. The respective commissioners shall post the requirements consistent with regulations, on their website, including any requirements as to time periods and region.

5. This section does not require the medical assistance program to cover personal caregiving or compassionate caregiving and such caregiving shall not be reimbursed under the medical assistance program.

6. This section does not relieve any facility licensed under this article, or any facility operator, of any obligation or responsibility imposed by any other applicable law or regulation.

7. Nothing in this section shall be construed to limit access by any visitor to a facility that would otherwise be permitted under federal or state law or regulation.

TITLE 3

RESIDENTIAL PROGRAMS FOR CHILDREN

Section 462. Responsibility for standards.

462-a. Responsibility for inspection and supervision.

462-b. Responsibility for enforcement.

§ 462. Responsibility for standards. 1. (a) The office of children and family services shall promulgate regulations concerning standards of care and treatment and fiscal, administrative, nutritional, architectural and safety standards, consistent with the provisions of section three hundred ninety-eight-a of this chapter, which shall apply to all facilities exercising care or custody of children or providing care or shelter to unmarried mothers.

(b) With respect to facilities exercising care or custody of children, no license or operating certificate shall be provided or renewed unless

it can be demonstrated that such facilities comply with regulations for the prevention and remediation of reportable incidents involving children in such facilities, including procedures for:

(i) consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law, assisting the justice center for the protection of people with special needs with its review and evaluation of criminal background checks of prospective employees, as set forth in subdivision five of section five hundred fifty-three of the executive law;

(ii) establishing, for employees, relevant minimal experiential and educational qualifications consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law;

(iii) assuring adequate and appropriate supervision of employees, volunteers and consultants;

(iv) demonstrating by a residential facility or program that appropriate action is taken to assure the safety of the child who is reported pursuant to article eleven of this chapter to the vulnerable persons' central register as well as other children in care, immediately upon notification that a report of a reportable incident has been made with respect to a child in such facility or program;

(v) consistent with applicable collective bargaining agreements, assuring that an individual who has committed a category one offense, as defined in paragraph (a) of subdivision five of section four hundred ninety-three of this chapter, that is included on the vulnerable persons' central register is not hired or otherwise used in any position in which such individual would have regular and substantial contact with a service recipient in any program operated, licensed or certified by the office;

(vi) removing a child, consistent as applicable with any court order placing the child, when it is determined that there is risk to such child if he or she continues to remain within a facility or program;

(vii) appropriate preventive and remedial action to be taken including legal actions, consistent with appropriate collective bargaining agreements and applicable provisions of the civil service law.

(c) With respect to facilities exercising care or custody of children such standards shall establish as a priority that:

(i) subject to the amounts appropriated therefor, administrators, employees, volunteers and consultants receive training in at least the following: child abuse prevention and identification, safety and security procedures, the principles of child development, the characteristics of children in care and techniques of group and child management including crisis intervention, the laws, regulations and procedures governing the protection of children from abuse and neglect, and other appropriate topics, provided however, that the office may exempt administrators and consultants of such facilities or programs from such requirements upon demonstration of substantially equivalent knowledge or experience; and

(ii) subject to the amounts appropriated therefor, children receive instruction, consistent with their age, needs and circumstances as well as the needs and circumstances within the facility or program, in techniques and procedures which will enable such children to advocate for and protect themselves from reportable incidents; and

(iii) the office, in consultation with the executive director of the justice center for persons with special needs, shall take all reasonable and necessary actions to assure that employees, volunteers and consultants in residential care facilities and programs are kept apprised on a current basis of all office policies and procedures relating to the protection of children from reportable incidents, and shall monitor and supervise the provision of training to such administrators, employees, volunteers, children and consultants.

(d) Such regulations shall be developed in consultation with other state departments and agencies responsible for human services programs including, but not limited to, the department of education, the department of health, the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services and the justice center for the protection of people with special needs and shall, to the extent possible, be consistent with those promulgated by other state agencies for such purposes.

(e) This subdivision shall not apply to facilities operated by or certified or licensed to operate by another state agency.

(f) No residential institution for children as defined in subdivision forty-four of section sixteen hundred seventy-six of the public authorities law shall enter into a lease, sub-lease or other agreement

with the dormitory authority pursuant to subdivision forty of section sixteen hundred eighty of the public authorities law unless and until:

(i) the office of children and family services, the director of the division of the budget and any other state agency which licenses such residential institutions for children first determines that the project is necessary to address health and safety needs of children at the institution, approve the project cost upon determination that such costs are reasonable, necessary and cost effective based upon the application of cost per square foot guidelines and any other standards applicable to the type of program or to the clinically-required needs of a specialized group of children to be served by the project; and

(ii) the office of children and family services or such other state agency which licenses such residential institution for children approves the plans and specifications of the residential facilities to be replaced, reconstructed, rehabilitated, improved, renovated, or otherwise provided for, furnished or equipped.

2. (a) The office shall establish regulations governing secure and non-secure detention facilities subject to article nineteen-G of the executive law and residential facilities operated as approved runaway programs or transitional independent living support programs pursuant to article nineteen-H of the executive law.

(b) The appropriate offices of the state department of mental hygiene shall establish regulations governing all child care facilities subject to articles thirty-one and thirty-two of the mental hygiene law.

(c) The department of mental hygiene and the office shall propose any additional standards as are deemed necessary to adequately ensure the care of children in facilities subject to the inspection and supervision of the department, which care for a significant number of mentally disabled children, juvenile delinquents or persons in need of supervision. The final form of any such additional standards shall be subject to the approval of the department of mental hygiene for such standards related to the care of mentally disabled children, or the office for such standards related to the care of juvenile delinquents and persons in need of supervision.

§ 462-a. Responsibility for inspection and supervision. 1. The office of children and family services shall inspect and supervise secure and non-secure detention facilities and those office of children and family services residential facilities authorized by article nineteen-G of the executive law and those residential facilities operated as approved runaway programs or transitional independent living support programs pursuant to article nineteen-H of the executive law.

2. The appropriate offices of the state department of mental hygiene shall inspect and supervise those facilities subject to articles thirty-one and thirty-two of the mental hygiene law.

3. For those facilities which care for a significant number of mentally disabled children, the department shall enter into written cooperative agreements no later than October first, nineteen hundred seventy-seven with the department of mental hygiene for joint inspection and supervision of such facilities, as appropriate.

4. The office of children and family services shall inspect and supervise all other child care facilities subject to its regulation.

§ 462-b. Responsibility for enforcement. 1. The office of children and family services shall exercise the enforcement powers enumerated in section four hundred sixty-d of this article which may apply to secure and non-secure detention facilities and to those office of children and family services residential facilities authorized by article nineteen-G of the executive law and those residential facilities operated as approved runaway programs or transitional independent living support programs pursuant to article nineteen-H of the executive law.

2. The appropriate offices of the state department of mental hygiene shall exercise the enforcement powers enumerated in section four hundred sixty-d of this article which may apply to those facilities subject to articles thirty-one and thirty-two of the mental hygiene law.

3. With respect to facilities which care for a significant number of

mentally disabled children, the department shall enter into written cooperative agreements no later than October first, nineteen hundred seventy-seven with the department of mental hygiene establishing circumstances under which the department will at the request of the department of mental hygiene act to limit or modify the operating certificate of any facility so as to preclude such facility from accepting, caring for or continuing to care for mentally disabled children.

4. The office of children and family services shall exercise the enforcement powers enumerated in section four hundred sixty-d of this article with respect to all other child caring facilities subject to its regulation either independently or at the request of the department of mental hygiene.

TITLE 4

REGISTRY OF COMMUNITY RESIDENTIAL FACILITIES

Section 463. Definitions.

463-a. Statewide registry.

463-b. Powers and duties.

§ 463. Definitions. For the purposes of this title, the following definitions shall apply:

1. "Community residential facility" means any facility operated or subject to licensure by the state which provides a supervised residence for mentally, emotionally, physically, or socially disabled persons or for persons in need of supervision or juvenile delinquents. This term includes, but is not limited to, community residences for the mentally disabled operated or licensed by the office of mental health or office for people with developmental disabilities or by the divisions of the office of alcoholism and substance abuse, agency operated boarding homes, group homes or private proprietary homes for adults operated or licensed by the department of social services, group homes operated by, contracted for or licensed by the division for youth and half-way houses

operated or licensed by the division of substance abuse services.

2. "Sponsoring agency" means an agency or unit of government, a voluntary agency as defined in the mental hygiene law or other organization which intends to establish or operate a community residential facility.

3. "Licensing authority" means the head of the state agency responsible for issuance of a license or operating certificate to a proposed community residential facility.

§ 463-a. Statewide registry. 1. There shall be established in the department a statewide registry on community residential facilities. The department shall develop, in cooperation with the state agencies responsible for the planning, administration, licensing, regulation and operation of community residential facilities, a uniform data base for a statewide registry to include, but not be limited to, the following information:

(a) the nature or type of such community residence for the disabled including the class of disabled persons it is intended to serve;

(b) the title of the sponsoring agency responsible for the operation of such community residence;

(c) the geographical area in which such community residence is located, including but not limited to street address, municipality, local school district and health systems agency;

(d) the number of clients or residents authorized to live within such community residences; and

(e) the licensing authority of such community residence.

2. (a) The department shall, no later than December fifteenth, nineteen hundred eighty-three and annually thereafter, prepare a report to the governor and the legislature including the following information:

(i) a registry of all community residences presently operating in this state including the types of services provided, the number of persons served, the number of persons authorized to reside therein, the licensing authority by which it is governed and the municipality in

which it is located; and

(ii) the number of persons in the state presently receiving placement in a community residence including the general type of services being provided and the municipality in which they are provided.

(b) The department shall prepare for inclusion in the annual report required by subdivision (d) of section seventeen of this chapter to be filed with the governor and the legislature prior to December fifteenth of each year an analysis of the information as previously described in paragraph (a) of this subdivision so as to improve the ability of such state agencies responsible for the planning, administration, licensing, regulation and operation of such community residences to effectively identify existing and future needs for persons and services in different areas and coordinate their planning efforts to meet such needs.

3. The department shall provide or cause to be provided technical assistance, within available resources, to municipalities which intend to establish similar coordinated planning functions as described in this act.

§ 463-b. Powers and duties. The department shall have the following powers and duties:

(a) to request and receive appropriate information as required by the provisions of this title from state agencies responsible for the planning, administration, licensing, regulation or operation of community residential facilities, including a list of all community residences heretofore or hereafter established by such agency or pursuant to a license or operating certificate issued by such agency;

(b) to compile and index such information received from state agencies responsible for the planning, administration, licensing, regulation or operation of community residential facilities in order to establish a comprehensive registry of such residences within the state of New York;

(c) to provide access to such registry to such state agencies and sponsoring agencies responsible for the planning, administration, licensing, regulation or operation of community residential facilities so as to coordinate and integrate planning among such state agencies;

(d) to make available to municipalities a listing of such community residential facilities located within their jurisdiction or within an adjoining municipality in order to facilitate proper local planning efforts for the development of such community residential facilities; and

(e) to promulgate such regulations as may be necessary to protect information required to be kept confidential pursuant to law and to prevent the dissemination of any personally identifiable information of residents or clients of such community residential facilities.

ARTICLE 8

NEW YORK STATE RURAL HUMAN SERVICES NETWORKING PROGRAM

Section 464. Short title.

464-a. Legislative findings.

464-b. Definitions.

464-c. Advisory committee created.

464-d. Program established.

464-e. Distribution of reports.

464-f. Funds not to be diminished.

§ 464. Short title. This article may be cited as the "rural human services networking program".

§ 464-a. Legislative findings. The legislature hereby finds, determines, and declares that:

1. In rural areas there is a necessity to promote different approaches to human services delivery if programs are to properly address diverse community and individual needs and such unique rural conditions as low population density; a large proportion of elderly persons; the absence of economies of scale; geographic isolation; inadequate transportation; fluctuating service demands; and general lack of suitable alternatives for service delivery.

2. The human services delivery system in rural areas is often fragmented, consisting of isolated providers with limited financial resources and limited information-sharing networks. Many such providers are currently providing identical or similar services to the same clientele in the same area, often without being aware of a possible duplication of effort.

3. A full range of coordinated and integrated human services is vital to the health and well-being of residents of rural areas of the state who are or may in the future be confronted with such intense social problems as domestic violence, teenage pregnancy, migrant health problems, nutritional deficiencies, suicide, hunger, unemployment, lack of suitable shelter, crime, drug and alcohol abuse and poverty.

4. A proper response to intense social problems in some rural areas would be to encourage greater sharing of information and resources among human services providers in such rural areas, thereby enhancing the cost-effectiveness and delivery of services required to address such social problems. Such cooperative undertakings could be accomplished if a program of financial incentives and state-level technical assistance were made available to encourage providers in rural areas to embark upon such cooperative arrangements and networking of the services they provide.

§ 464-b. Definitions. For the purposes of this article:

1. "Rural area" shall mean a rural area as defined in section two thousand nine hundred fifty-one of the public health law.

2. "Advisory committee" shall mean the committee created in accordance with section four hundred sixty-four-c of this article, for the purposes of assisting the commissioner in administering the New York state rural human services networking program created pursuant to the provisions of this article.

3. "Human service" shall mean any service provided to individuals or

groups of individuals, for the purpose of improving or enhancing such individuals' health and/or welfare, by addressing social problems including but not limited to: domestic violence, teenage pregnancy, migrant health problems, child abuse, nutritional deficiencies, suicide, hunger, unemployment, lack of suitable shelter, crime, drug and alcohol abuse and poverty.

4. "Human services provider" shall mean any public or not-for-profit private entity utilizing public and/or private funds to provide or contract for the provision of human services for the benefit of the general public or specific client groups.

§ 464-c. Advisory committee created. 1. An advisory committee shall be created to assist the commissioner in carrying out the provisions of this article. Such advisory committee shall consist of seven members, with the commissioner or his or her designee serving as chairperson. Membership of the committee shall include the following persons or their designees: the chairperson of the legislative commission on the development of rural resources which was created by chapter four hundred twenty-eight of the laws of nineteen hundred eighty-two; the director of the state office of rural affairs; the director of the office for the aging; the commissioner of the department of health; the commissioner of the division for youth; and the commissioner of the office of mental health. The chairperson of the advisory committee may invite the commissioner or director, or his or her designee, of any other state agency or department, or any other rural human services provider or consumer, to serve as an ex-officio member of the committee. The commissioner shall take actions to promote the efficient and effective operation of the advisory committee.

2. The advisory committee shall:

a. Review and recommend to the commissioner guidelines for the operation of the rural human services networking program;

b. Recommend any changes in statutes or regulations necessary to

accomplish the purposes of this article;

c. Assist the department in the evaluation of individual pilot projects and of the rural human services networking program; and

d. Assist in the development of interim and final reports, in accordance with section four hundred sixty-four-e of this article.

e. Assist the commissioner in determining those rural areas to receive priority consideration in selecting pilot project sites, pursuant to subdivision four of section four hundred sixty-four-d of this article.

§ 464-d. Program established. 1. The commissioner is authorized to establish within the department a rural human services networking program, for the purpose of assisting human services providers in rural areas who seek to participate in the program as hereinafter provided, to develop pilot projects to address intense social problems through the creation of contracts or joint or cooperative agreements. Such pilot projects shall capitalize on the strength of existing providers by promoting the sharing of resources and service delivery in rural areas, with the goal of reducing total cost to both consumers and providers while increasing the availability and accessibility of human services in such areas. Pilot projects shall also serve to identify methods of overcoming impediments to the joint provision of integrated and cost-effective human services in rural areas.

2. Within one hundred twenty days after the effective date of this article, the commissioner, with the advice and guidance of the advisory committee, shall establish and give public notice of the existence of the rural human services networking program, and the availability of competitive grants to human services providers interested in undertaking pilot projects pursuant to the provisions of this article. At that time the commissioner shall also distribute information on such program, and application forms and procedures to eligible human services providers.

3. In order to implement the rural human services networking program

the commissioner shall, within the amounts appropriated therefor, provide grants to eligible applicants on a competitive basis. No grant for a pilot project shall be awarded by the commissioner unless the application for such grant has been reviewed by state agencies which license or certify the applicant agencies and any comments on such proposals are considered by the commissioner. To be eligible for a grant under this article, each application shall be submitted pursuant to a contract or joint or cooperative agreement on behalf of two or more local or regional human services providers intending to implement a pilot project in a rural area. Applications shall be submitted to the commissioner on such forms and at such times as the commissioner shall prescribe, and completed applications shall be approved or disapproved within ninety days of submission. In the event the commissioner determines that a grant application is incomplete, or where waivers of any regulations are requested by an applicant, the commissioner shall have an additional ninety days to act upon such application.

4. In determining whether an application shall be approved and funds awarded pursuant to this article, the commissioner shall give priority consideration to applications received from human services providers intending to implement a pilot project in the most sparsely populated rural areas, as shall be previously determined by the commissioner, in conjunction with the advisory committee. In addition, the commissioner shall consider, but such consideration shall not be limited to, the following:

a. The specific objectives and description of the proposed pilot project, including demonstrated awareness of the level of human services currently being provided within the service area;

b. The degree to which the proposed pilot project would meet local or regional human services needs;

c. The demonstrated ability of the applicants to undertake the pilot project;

d. The contribution the project would make toward the identification

and development of innovative delivery systems;

e. The degree to which the proposal would enhance the delivery or improve the availability and accessibility of services with respect to the full continuum of human services needs;

f. The degree to which continuity of care would be fostered and improved;

g. The degree to which the proposal would enhance cost efficiency and access to human services by populations in need of such services;

h. The degree to which information sharing, communication, and cooperation between providers and consumers would be fostered;

i. The degree to which economies of scale in both the supply and demand of services would be addressed;

j. The demonstrated level of commitment and support for the project expressed by the community, local government body or bodies, and other local or regional human services providers;

k. The impact the proposed pilot project will have on state agencies providing services or funds for human services programs in the area, as determined by the commissioner after consulting with such agencies;

l. The consistency of the proposed pilot project with the provisions of article forty-one of the mental hygiene law; and

m. Any potential loss of funds or state or federal aid to which providers may now be entitled, including but not limited to medicaid funds, and the actions to be taken by the applicant and by the commissioner to ensure the continuation of the same amount of funds or aid.

5. The commissioner or his or her duly authorized representative may meet with representatives of the applicants for the informal discussion

of preliminary and informal plans for a proposed project and may provide such technical assistance as may be requested to implement an approved project.

6. Pilot projects shall be approved for a time period not to exceed three years. Within the amounts appropriated therefor, the commissioner shall approve pilot project grant awards of not less than ten thousand dollars nor more than fifty thousand dollars per pilot project in any one calendar year. Such grants may be renewed annually for up to three consecutive years, subject to the availability of funds. Funds awarded to each recipient in the second and third years may be the same amount as the grant received in the first year, or may be a lesser amount, with the amounts of such awards determined in accordance with the nature of the approved pilot project, the number of delivery and consumer agencies, and the number of clients to be served. If the commissioner determines that a grant is being used for purposes other than those which are in conformity with this article, the commissioner may withdraw approval of the project and require repayment of all or part of such grant to the state. The commissioner shall cause reports to be prepared and submitted for each project by the grantees at such times and in such manner as are consistent with the purposes of this article.

7. For the purpose of promoting innovative approaches and maximum effectiveness in the utilization of state and local monies, and notwithstanding any other provisions of law, the commissioner may waive any departmental regulations that may impede the successful implementation and testing of a pilot project, provided that there is a finding by the commissioner that the general welfare of the people receiving human services will not be impaired. In addition, the commissioner shall consult with federal, state, and local officials with respect to securing their cooperation in coordinating related programs and in seeking necessary regulatory waivers, in order to assure the effective operation of any pilot project. Notwithstanding any other provisions of law, at the request of the commissioner, on behalf of an applicant, the commissioner or director of any other state agency or department shall be authorized to waive any applicable regulations of such agency or department that may impede the successful implementation

of a pilot project, provided there is a finding that the general welfare of the people receiving human services will not be impaired.

8. Upon the request of an applicant, the commissioner or his or her duly authorized representative may render to such applicant such technical services and assistance as the department may possess or as may be available to it in order to enable the applicant to carry out the project and terms of such contract.

§ 464-e. Distribution of reports. The commissioner, in conjunction with the advisory committee, shall prepare an interim report within thirty months after the effective date of this article, which shall include a preliminary review of each pilot project. The commissioner, in conjunction with such committee, shall also prepare a final report within sixty months after the effective date of this article. Such final report shall contain a description of the various human services pilot projects demonstrated and their perceived effect on cost, delivery and accessibility of human services in rural areas. The final report shall describe the effect of each pilot project on existing providers and consumers of such services, as well as the effect on each community served. The same report shall identify laws, rules and regulations, if any, that should be repealed or amended in order to make it possible to properly and efficiently implement such plans or programs in other rural areas of the state. Said interim and final reports shall be distributed to all participants in the program, as well as to the governor and the legislature.

§ 464-f. Funds not to be diminished. For the duration of the grant period, no local or regional human services provider shall lose any grants or funds to which it may be entitled if it were to operate separately, solely because it elects to participate in a pilot project program and, notwithstanding any other provision of law to the contrary, such grants or funds shall continue to be allocated in the same manner and in the same amount as if such human services provider was not a participant in such pilot project program.

ARTICLE 8-A

NUTRITION OUTREACH AND PUBLIC EDUCATION PROGRAM

Section 465. Nutrition outreach and public education program; establishment.

465-a. Definitions.

465-b. Responsibilities of the commissioner.

465-c. Grants to community organizations.

465-d. Criteria for high risk areas.

§ 465. Nutrition outreach and public education program; establishment.

The nutrition outreach and public education program is established within the office of temporary and disability assistance. Such program is established to ensure maximum participation by eligible persons in federal and state food assistance programs. The program shall be structured so as to increase participation statewide but with particular attention to high risk areas with a focus on certain at risk populations.

§ 465-a. Definitions. As used in this article:

1. "High risk areas" means any county or urban area where a significant percentage or number of those potentially eligible for food assistance programs are not participating in such programs.

2. "Food assistance programs" means programs including but not limited to food stamp programs, school breakfast and lunch programs, child care food programs, summer food service programs, special supplemental programs for women, infants and children, congregate meal programs and home delivered meal programs.

3. "At risk populations" means populations including but not limited to families with children receiving family assistance, households receiving federal supplemental security income payments, households with

incomes at or below one hundred eighty-five percent of the poverty level, recipients of emergency food, elderly or disabled persons, homeless persons, unemployed persons, and families and persons residing in rural households who are at risk of nutritional deficiencies.

§ 465-b. Responsibilities of the commissioner. The commissioner shall directly or through contract administer a program of nutrition outreach that shall include but not be limited to:

1. statewide coordination;
2. provision of information as to the availability of, eligibility criteria for, and application procedure for food assistance programs;
3. coordination of efforts among state agencies including, but not limited to, the department of health, the office for the aging, and the education department and community agencies involved in food assistance programs;
4. compilation of statistical data from state and local agencies and dissemination to community organizations; and
5. nutrition education.

§ 465-c. Grants to community organizations. The commissioner shall make grants within the amount appropriated therefor to community-based organizations or consortia of community-based organizations in high risk areas for outreach activities. Such outreach activities shall include but not be limited to:

1. identification of barriers to participation in food assistance programs including the unavailability of such programs;
2. information as to program availability, individual or household eligibility, and application procedure;

3. identification of at risk populations and individuals within the at risk populations who are not participating;

4. assistance with eligibility requirements including verification and enrollment;

5. dissemination of information to and conducting training sessions for local groups; and

6. nutrition education to at risk populations.

§ 465-d. Criteria for high risk areas. In selecting those areas which would be determined to be high risk and therefore eligible for a grant, the commissioner may consider factors including, but not limited to:

1. fifty percent or more of those potentially eligible are not participating in the food stamp program or where a significant number of the population potentially eligible, particularly the working poor and the elderly, are not participating;

2. twenty-five percent or more of children are eligible for free or reduced price meals within the school lunch program;

3. infant mortality or morbidity rates;

4. economic indicators including, but not limited to, the unemployment rate, prevailing wages, and recent loss of job base;

5. high concentration of at risk populations; and

6. unavailability of food assistance programs in the area because of lack of provider participation or knowledge about the existence of such programs.

ARTICLE 8-B
TRANSITIONAL CARE

Section 466-a. Agreements.

466-b. Care provided by authorized agencies.

§ 466-a. Agreements. The department shall enter into memorandums of understanding with the office of mental health and the office for people with developmental disabilities. The memorandums with the office for people with developmental disabilities and the office of mental health shall facilitate access by those offices to child care facilities providing transitional care to young adults as may be necessary for those offices to meet their responsibilities for monitoring the care of the young adults.

§ 466-b. Care provided by authorized agencies. An authorized agency as defined in section three hundred seventy-one of this chapter shall also be authorized to provide temporary care for persons over age twenty-one who meet the requirements of section 7.37-a or 13.37-a of the mental hygiene law or on whose behalf temporary payments are being made pursuant to section 7.38 or 13.38 of the mental hygiene law, who were in the care of the authorized agency at the time of their twenty-first birthday, and who have remained continuously in the care of the authorized agency since their twenty-first birthday. Notwithstanding any inconsistent provision of law, in any case where an individual receiving transitional funding is about to be transferred from a child care facility to an adult placement, a transfer plan shall be prepared by the sending facility and forwarded to the receiving facility and the individual, and, unless the individual objects, the parents, guardian or other family members prior to the transfer. The transfer plan shall include any information necessary to facilitate a safe transfer, such as specific problems, schedule for administering medications and behavior unique to the individual.

ARTICLE 9-A

Berkshire Industrial Farm

Title 2. Berkshire Industrial Farm (Secs. 472-e-472-q).

TITLE 2

BERKSHIRE INDUSTRIAL FARM

Section 472-e. Institution continued; powers.

472-f. Objects of corporation.

472-g. Board of directors.

472-h. Election of directors.

472-i. Quorum to do business.

472-j. Custody of children, how acquired; notice to corporation.

472-k. Placement of children in care of corporation; effect of placement.

472-l. Transfer of certain children by agencies.

472-m. Power of corporation as to children in its care; corporation to act as guardian.

472-n. Statements as to age.

472-o. Reports.

472-p. Property exempt from taxation.

472-q. Powers and liabilities.

§ 472-e. Institution continued; powers. The body corporate known prior to August twenty-fifth, eighteen hundred and ninety-six, by the name of the "Burnham Industrial Farm," the name of which was, on that day, changed to "Berkshire Industrial Farm," which corporation was continued by the former provisions of this section, taking effect February seventeenth, nineteen hundred and nine, under the name and style of "Burnham Industrial Farm," and thereafter continued as the "Berkshire Industrial Farm" by section three of chapter six hundred nineteen of the laws of nineteen hundred forty until March first, nineteen hundred fifty-nine, when its name was changed to "Berkshire Farm for Boys" by chapter thirty-five of the laws of nineteen hundred fifty-nine and thereafter continued as the "Berkshire Farm for Boys," is hereby changed and shall be known as "Berkshire Farm Center and Services for Youth", and by the latter name shall have power to take by gift,

lease, purchase, devise or bequest real and personal property and hold the same for the proper uses and purposes of said corporation.

§ 472-f. Objects of corporation. The objects of this corporation shall be to receive and take charge of such children as may legally come into its custody and care, and to provide for their support, education and training.

§ 472-g. Board of directors. The property and concerns of the corporation shall be managed by a board of not over twenty-five and not less than ten directors, who shall receive no compensation. The number of directors to be chosen within the maximum and minimum limit shall be determined in the manner prescribed by the by-laws. At least four in number of the directors shall be elected annually on the first day of May of each year, but they shall hold office until their successors are elected. The board of directors in office on April first, nineteen hundred forty-nine, is continued in office until their successors are chosen.

§ 472-h. Election of directors. On the first day of May in each year at least four in number of the board of directors shall be elected by the corporation in such manner and place as the by-laws shall direct, but if no election is held on any such day the election may be held on any subsequent day, and any vacancies occurring otherwise than by the expiration of a regular term may be filled for the balance of such term in accordance with the by-laws of this corporation and by the votes of a majority of the directors then in office.

§ 472-i. Quorum to do business. Five members of the board shall be a quorum provided however in the case where the then current board of directors is more than fifteen members then six members of the board shall be a quorum, and the board may delegate its powers, during the interval between its meetings, to an executive committee of its own

members, whose minutes shall be kept as provided by the by-laws, and shall be reported for approval to all stated meetings of the board; but no purchase or conveyance of real estate shall be made unless by the concurrence of a majority of the whole board.

§ 472-j. Custody of children, how acquired; notice to corporation.

The corporation shall be deemed to have acquired lawful care and custody of any child between the ages of six and eighteen years who shall have been surrendered to it by its parent or guardian; provided that such surrender is evidenced by a writing executed by such parent or guardian setting forth the name and age of the child, the date of surrender, and the term for which such surrender is made, and expressly vesting in the corporation all the powers and control over the child of which such parent or guardian was possessed; provided that no such surrender shall be made except upon five days' previous notice of the intention to make such surrender in writing, by the parent or guardian of the child to the said corporation or its agents.

§ 472-k. Placement of children in care of corporation; effect of placement. The family court may commit or place in said corporation, with its consent, any child adjudicated to be a juvenile delinquent or a person in need of supervision. Such commitment or placement in said corporation shall be to the custody and control thereof for the period provided in the order of commitment or placement.

§ 472-l. Transfer of certain children by agencies. The corporate authorities of any agency now or hereafter having the lawful custody and care of any child not less than six years of age, and not awaiting trial nor under sentence for a term of years for crime, may, with the consent of said corporation, transfer and assign such custody and care to this corporation upon such terms as the directors of such institution and said corporation may agree.

§ 472-m. Power of corporation as to children in its care; corporation to act as guardian. Said corporation shall have the custody and control of all children surrendered, committed, placed or transferred to it under sections four hundred seventy-two-j to four hundred seventy-two-l, and shall have authority by its officers or agents to restrain and direct them, to assign them to suitable employments, to determine their hours of labor, study and rest, to care for their sustenance and health, and to instruct them in useful knowledge; and shall have power to place such children in suitable homes where they may be adopted into families or taken on trial or for a limited time, or to place such children in group homes or group residences operated by the corporation or by other agencies; or, in its discretion, to return them to their former home or their parents or guardians under the supervision and guidance of the corporation. And said corporation may, with the consent of any other agency authorized by law to take the custody and control of children, transfer to such other agency the custody and control of any child whenever such transfer is deemed by said corporation to be necessary and proper for the welfare of such child or for the discipline or protection of other children in its charge, provided that there be first obtained from a judge of a court of record an order of approval of such transfer.

§ 472-n. Statements as to age. In all cases under this article where children shall come under the care, custody or control of said corporation, the age of such children shall, so far as said corporation is concerned, be prima facie deemed and taken to be correct as stated in the written surrender of the parent or guardian, or the order of placement or commitment by a family court, or in the transfer or placement by any agency at the time of placement, admission or commitment.

§ 472-o. Reports. The said corporation shall annually, on or before the fifteenth day of January, report to the legislature the number and names of the children in its custody or under its guardianship, their age, residence, occupation, state of education, together with the

changes in these particulars during the preceding year; the receipts and expenditures and the financial condition of the corporation, and an account of its general operations.

§ 472-p. Property exempt from taxation. So long as the property of said corporation shall be used for charitable purposes only, such property, both real and personal, shall be exempt from taxation.

§ 472-q. Powers and liabilities. Said corporation shall possess the general powers and be subject to the general restrictions and liabilities of incorporated charitable institutions.

ARTICLE 9-B

ADULT PROTECTIVE SERVICES

Title 1. Protective services (Sec. 473).

2. Short-term involuntary protective services orders (Secs. 473-a--473-c).

3. Community guardianship (Sec. 473-d--473-e).

TITLE 1

PROTECTIVE SERVICES

Section 473. Protective services.

§ 473. Protective services. 1. In addition to services provided by social services officials pursuant to other provisions of this chapter, such officials shall provide protective services in accordance with federal and state regulations to or for individuals without regard to income who, because of mental or physical impairments, are unable to manage their own resources, carry out the activities of daily living, or protect themselves from physical abuse, sexual abuse, emotional abuse, active, passive or self neglect, financial exploitation or other hazardous situations without assistance from others and have no one

available who is willing and able to assist them responsibly. Such services shall include:

- (a) receiving and investigating reports of seriously impaired individuals who may be in need of protection;
- (b) arranging for medical and psychiatric services to evaluate and whenever possible to safeguard and improve the circumstances of those with serious impairments;
- (c) arranging, when necessary, for commitment, guardianship, or other protective placement of such individuals either directly or through referral to another appropriate agency, provided, however, that where possible, the least restrictive of these measures shall be employed before more restrictive controls are imposed;
- (d) providing services to assist such individuals to move from situations which are, or are likely to become, hazardous to their health and well-being;
- (e) cooperating and planning with the courts as necessary on behalf of individuals with serious mental impairments; and
- (f) other protective services for adults included in the regulations of the department.

2. (a) In that the effective delivery of protective services for adults requires a network of professional consultants and services providers, local social services districts shall plan with other public, private and voluntary agencies including but not limited to health, mental health, aging, legal and law enforcement agencies, for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services.

(b) Each social services district shall prepare, with the approval of the chief executive officer, or the legislative body in those counties without a chief executive officer, after consultation with appropriate public, private and voluntary agencies, a district-wide plan for the provision of adult protective services which shall be a component of the district's multi-year consolidated services plan as required in section thirty-four-a of this chapter. This plan shall describe the local implementation of this section including the organization, staffing, mode of operations and financing of the adult protective services as well as the provisions made for purchase of services, inter-agency

relations, inter-agency agreements, service referral mechanisms, and locus of responsibility for cases with multi-agency services needs. Commencing the year following preparation of a multi-year consolidated services plan, each local district shall prepare annual implementation reports including information related to its adult protective services plan as required in section thirty-four-a of the social services law.

(c) Each social services district shall submit the adult protective services plan to the department as a component of its multi-year consolidated services plan and subsequent thereto as a component of its annual implementation reports and the department shall review and approve the proposed plan and reports in accordance with the procedures set forth in section thirty-four-a of this chapter.

3. Any social services official or his designee authorized or required to determine the need for and/or provide or arrange for the provision of protective services to adults in accordance with the provision of this section, shall have immunity from any civil liability that might otherwise result by reason of providing such services, provided such official or his designee was acting in the discharge of his duties and within the scope of his employment, and that such liability did not result from the willfull act or gross negligence of such official or his designee.

4. For the purpose of developing improved methods for the delivery of protective services for adults, the department with the approval of the director of the budget, shall authorize a maximum of five demonstration projects in selected social services districts. Such projects may serve a social services district, part of a district or more than one district. These demonstration projects shall seek to determine the most effective methods of providing the financial management component of protective services for adults. These methods shall include but not be limited to: having a social services district directly provide financial management services; having a social services district contract with another public and/or private agency for the provision of such services; utilizing relatives and/or friends to provide such services under the direction of a social services district or another public and/or private agency and establishing a separate public office to provide financial

management services for indigent persons. The duration of these projects shall not exceed eighteen months. Furthermore, local social services districts shall not be responsible for any part of the cost of these demonstration projects which would not have otherwise accrued in the provision of protective services for adults. The total amount of state funds available for such financial management services demonstration projects, exclusive of any federal funds shall not exceed three hundred thousand dollars. The commissioner shall require that a final independent evaluation by a not-for-profit corporation be made of the demonstration projects approved and conducted hereunder, and shall provide copies of such report to the governor and the legislature.

5. Whenever a social services official, or his or her designee authorized or required to determine the need for, or to provide or arrange for the provision of protective services to adults in accordance with the provisions of this title has a reason to believe that a criminal offense has been committed, as defined in the penal law, against a person for whom the need for such services is being determined or to whom such services are being provided or arranged, the social services official or his or her designee must report this information to the appropriate police or sheriff's department and the district attorney's office when such office has requested such information be reported by a social services official or his or her designee.

6. Definitions. When used in this title unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "Physical abuse" means the non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.

(b) "Sexual abuse" means non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.

(c) "Emotional abuse" means willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.

(d) "Active neglect" means willful failure by the caregiver to fulfill the care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.

(e) "Passive neglect" means non-willful failure of a caregiver to fulfill care-taking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.

(f) "Self neglect" means an adult's inability, due to physical and/or mental impairments to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; or managing financial affairs.

(g) "Financial exploitation" means improper use of an adult's funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.

7. Notwithstanding any other provision of law, for the purposes of this article an Indian tribe that has entered into an agreement with the office of children and family services pursuant to section thirty-nine of this chapter, which includes the provision of adult services by such Indian tribe, shall have the duties, responsibilities and powers of a social services district or a social services official for the purpose of providing adult protective services.

8. The office of children and family services shall create and keep current best practice guidelines for the provision of adult protective services pursuant to this article. Such guidelines shall be distributed for use to local social services districts, and posted on such office's website, and shall include, but not be limited to, the procedures for:

- (a) reviewing any previous child or adult protective involvement;
- (b) assessing and identifying abuse and neglect of persons believed to

be in need of protective services;

(c) interviewing persons believed to be in need of protective services and their caretakers;

(d) reviewing when it is appropriate to seek a warrant to gain access to persons believed to be in need of protective services;

(e) identifying and making referrals for appropriate services; and

(f) communicating the rights of persons believed to be eligible for protective services.

TITLE 2

SHORT-TERM INVOLUNTARY PROTECTIVE SERVICES ORDERS

Section 473-a. Short-term involuntary protective services orders.

473-b. Reporting of endangered adults; persons in need of protective services.

473-c. An order to gain access to persons believed to be in need of protective services for adults.

§ 473-a. Short-term involuntary protective services orders. 1.

Definitions. When used in this section unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "endangered adult" means a person, age eighteen or over who is:

(i) in a situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to him or her, and

(ii) lacking capacity to comprehend the nature and consequences of remaining in that situation or condition, provided that:

a. refusal by the adult to accept protective services shall not in itself be sufficient evidence of such lack of capacity; and

b. mental illness shall not in itself be sufficient evidence of such lack of capacity.

(b) "short-term involuntary protective services" means those services set forth in section four hundred seventy-three of this article which are provided involuntarily pursuant to the procedures established by

this title.

(c) "petitioner" means a social services official initiating a proceeding pursuant to this title.

(d) "respondent" means an allegedly endangered adult.

2. Jurisdiction. The supreme court and the county court shall each have jurisdiction over the special proceeding commenced pursuant to the provisions of this title.

3. Venue. A petition for the provision of short-term involuntary protective services shall be made to:

(a) a term of the supreme court:

(i) held in the county in which the allegedly endangered adult resides or is found; or

(ii) held in a county, within the same judicial district, adjacent to the county in which the allegedly endangered adult resides or is found; or

(b) the county court:

(i) in the county in which the allegedly endangered adult resides or is found; or

(ii) in a county adjacent to the county in which the allegedly endangered adult resides or is found.

4. Petition. (a) A special proceeding to obtain an order authorizing the provision of short-term involuntary protective services may only be initiated by a social services official.

(b) The petition shall state, insofar as the facts can be ascertained with reasonable diligence:

(i) the name, age and physical description of the allegedly endangered adult; and

(ii) the address or other location where the allegedly endangered adult can be found.

(c) The petition shall state facts showing:

(i) that the adult who is the subject of this petition is an endangered adult as defined in paragraph (a) of subdivision one of this section;

(ii) the specific short-term involuntary protective services

petitioned for, how such services would remedy the situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to the allegedly endangered adult, and why such services are not overbroad as to extent or duration;

(iii) that the short-term involuntary protective services being applied for are necessitated by the situation or condition described in paragraph (a) of subdivision one of this section;

(iv) that other voluntary protective services have been tried and have failed to remedy the situation, and that a future, voluntary, less restrictive alternative would not be appropriate or would not be available;

(v) if a change in the allegedly endangered adult's physical location is being applied for, that remedy of the dangerous situation or condition described in paragraph (a) of subdivision one of this section is not appropriate in existing physical surroundings of the allegedly endangered adult;

(vi) any inconsistency known to petitioner between the proposed short-term involuntary protective services and the allegedly endangered adult's religious belief;

(vii) that if it reasonably appears that the allegedly endangered adult does not understand the English language, that reasonable efforts have been made to communicate with the allegedly endangered adult in a language he or she understands;

(viii) that no prior application has been made for the relief requested or for any similar relief, or if prior application has been made, the determination thereof, and the new facts, if any, that were not previously shown which warrant a renewal of the application.

(d) The petition shall be verified. Any allegations which are not based upon personal knowledge shall be supported by affidavits provided by a person or persons having such knowledge. Such affidavits shall be attached to the petition.

5. Commencement of proceedings. (a) A special proceeding to obtain an order authorizing the provision of short-term involuntary protective services shall be commenced by an order to show cause, the petition and supporting affidavits, if any.

(b) The order to show cause shall set forth:

(i) in bold type, on its face, the following:

WARNING IF YOU DO NOT APPEAR IN COURT YOUR LIFE AND LIBERTY MAY BE

SERIOUSLY AFFECTED. FOR FREE INFORMATION CONCERNING YOUR LEGAL RIGHTS
CALL OR VISIT

(ii) the protective services to be provided if the petition is granted;

(iii) the date, place and time of the hearing to determine whether the petition is to be granted;

(iv) that the respondent is entitled to counsel at all stages of the proceeding, that upon granting the order to show cause, the court shall assign counsel to assist the respondent, and that respondent is free at any time to discharge the counsel assigned by the court. The name, address and telephone number of the assigned counsel shall be inserted at the end of the warning referred to in subparagraph (i) of this paragraph;

(v) that if the respondent or retained counsel does not appear at the hearing to determine whether the petition is to be granted, the court will appoint a guardian ad litem;

(vi) that if the respondent discharges the assigned counsel prior to the hearing to determine if the petition is to be granted, such counsel shall report this fact to the court no later than the commencement of the hearing, and shall appear at the hearing, unless otherwise relieved by the court. In the event that neither the respondent nor his retained counsel appears at the hearing, the court may appoint the person previously assigned as counsel to act as the guardian ad litem; and

(vii) that a copy of the order to show cause, the petition, and supporting affidavits, if any, shall be served upon the respondent.

(c) Petitioner shall cause the order to show cause, the petition, and supporting affidavits, if any, to be delivered to the counsel assigned by the court.

(d) The order to show cause shall be made returnable within forty-eight hours following its issuance, unless such forty-eight hour period ends on a day in which the court is not in session, in which case the return date shall be the first business day following issuance of the order to show cause.

6. Service. (a) Service of the order to show cause, the petition, and supporting affidavits, if any, shall be made upon the respondent by any of the methods permitted by section three hundred eight of the civil practice law and rules. Notwithstanding any other provision of law to the contrary, Saturday and Sunday service is valid.

(b) The respondent shall be authorized to answer either orally or in writing.

7. Hearing. (a) Upon the return date designated in the order to show cause issued pursuant to subdivision five of this section a hearing shall be held forthwith.

(b) The allegedly endangered adult shall be entitled to be present at the hearing.

(c) Adjournments shall be permitted only for good cause shown. In granting adjournments the court shall consider the need to provide short-term involuntary services expeditiously.

(d) At the conclusion of the hearing the court shall issue for the record a statement of its findings of fact and conclusions of law.

8. Preference. The special proceeding authorized by this title shall have preference over all other causes in all courts of appropriate jurisdiction.

9. Findings. After a hearing, the court must find, in order to authorize the provision of short-term involuntary protective services, that all of the material allegations as specified in paragraph (c) of subdivision four of this section have been admitted or proven by clear and convincing proof.

10. Judgment. (a) The court, upon making the findings required by subdivision nine herein, shall direct the entry of a judgment authorizing the provision of short-term involuntary protective services to an endangered adult.

(b) A judgment authorizing short-term involuntary protective services to be provided to an endangered adult:

(i) shall prescribe those specific protective services, authorized by section four hundred seventy-three of this article, which are to be

provided and what person or persons are authorized or ordered to provide them; and

(ii) shall not provide for any forcible entry unless the persons so entering are accompanied by a peace officer, acting pursuant to his special duties, or a police officer, who is a member of an authorized police department or force or of a sheriff's department;

(iii) shall require persons acting under subparagraphs (i) and (ii) of this paragraph to submit a written report to the court within one week following the commencement of the ordered protective services.

(c) The judgment may order any other public or law enforcement official to render such assistance and cooperation as shall be within his legal authority, as may be required to further the objects of this title.

(d) The judgment shall not order removal to a hospital, as that term is defined in section 1.03 of the mental hygiene law.

(e) Issuance of the judgment shall not be evidence of the competency or incompetency of the endangered adult.

(f) No order issued pursuant to this title shall extend for more than seventy-two hours. An original order may be renewed once for up to another seventy-two hour period upon showing by the petitioner to the court that continuation is necessary to remedy the original situation or condition. No further renewals shall be permitted.

(g) In no event shall the short-term involuntary services authorized to be provided to an endangered adult by the judgment be broader than those which are necessary to remedy the situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to the endangered adult.

(h) Notice of the judgment rendered by the court shall be given to the respondent personally, or if personal service is not possible in whatever other fashion the court shall prescribe.

11. Appeals. Appeals arising from the issuance of judgments pursuant to the provisions of this title shall be expedited.

12. The assigned counsel and the guardian ad litem appointed by the court pursuant to this title shall be reimbursed for their services pursuant to section thirty-five of the judiciary law.

13. Nothing in this title precludes the simultaneous commencement of a proceeding under this title and a proceeding under section 9.43 of the mental hygiene law, or a proceeding under article seventy-seven or article seventy-eight of such law. A pending proceeding under section 9.43 of the mental hygiene law or under article seventy-seven or article seventy-eight of the mental hygiene law does not preclude commencement of a proceeding under this title.

14. No existing right or remedy of any character shall be lost, impaired or affected by reason of this title.

§ 473-b. Reporting of endangered adults; persons in need of protective services. Any person who in good faith believes that a person eighteen years of age or older may be an endangered adult or in need of protective or other services, pursuant to this article, and who, based on such belief either:

(a) reports or refers such person to the department, office for the aging, or any local social services district office or designated area agency on aging, law enforcement agency, or any other person, agency or organization that such person, in good faith, believes will take appropriate action; or

(b) testifies in any judicial or administrative proceeding arising from such report or referral shall have immunity from any civil liability that might otherwise result by reason of the act of making such report or referral or of giving of such testimony.

§ 473-c. An order to gain access to persons believed to be in need of protective services for adults. 1. A social services official may apply to the supreme court or county court for an order to gain access to a person to assess whether such person is in need of protective services for adults in accordance with the provisions of section four hundred seventy-three of this article when such official, having reasonable cause to believe that such person may be in need of protective services, is refused access by such person or another individual. A social

services official who is refused access shall assess, in consultation with a person in a supervisory role, whether or not it is appropriate to apply for an order to gain access to such person. Such assessment must be made as soon as necessary under the circumstances, but no later than twenty-four hours after the investigating official is refused access. The determination of whether or not to apply for an order to gain access and the reasons therefor shall be documented in the investigation file. Such application for an order to gain access shall state, insofar as the facts can be ascertained with reasonable diligence:

(a) the name and address of the person who may be in need of protective services for adults and the premises on which this person may be found;

(b) the reason the social services official believes the person may be in need of protective services for adults, which may include information provided by other agencies or individuals who are familiar with the person who may be in need of protective services for adults;

(c) the person or persons who are responsible for preventing the social services official from gaining access to the person who may be in need of protective services for adults;

(d) the efforts made by the social services official to gain access to the person who may be in need of protective services for adults;

(e) the names of any individuals, such as physicians or nurses, or other health or mental health professionals qualified to participate in the assessment, who shall accompany and assist the social services official conducting an assessment of the need of a person for protective services for adults;

(f) the manner in which the proposed assessment is to be conducted;

(g) that the social services official seeks an order solely for the purpose of assessing the need of a person for protective services for adults in accordance with the provisions of section four hundred seventy-three of this article and applicable regulations of the department;

(h) that no prior application has been made for the relief requested or for any similar relief, or if prior application has been made, the determination thereof, and the new facts, if any, that were not previously shown which warrant a renewal of the application.

2. Any allegations which are not based upon personal knowledge shall be supported by affidavits provided by a person or persons having such knowledge. Such affidavits shall be attached to the application.

3. The applications authorized in this section shall have preference over all other causes in all courts of appropriate jurisdiction, except those with a similar statutory preference.

4. If the court is satisfied that there is reasonable cause to believe that a person in need of protective services for adults may be found at the premises described in the application, that such person may be in need of protective services for adults, and that access to such person has been refused, it shall grant the application and issue an order authorizing the social services official and such other individuals as may be designated by the said official, accompanied by a police officer, to enter the premises to conduct an assessment to determine whether the person named in the application is in need of protective services for adults. The standard for proof and procedure for such an authorization shall be the same as for a search warrant under the criminal procedure law.

5. The provisions of this section shall not be construed to authorize a social services official to remove any person from the premises described in the application, or to provide any involuntary protective services to any person other than to assess a person's need for protective services for adults. Nothing in this section shall be construed to impair any existing right or remedy.

TITLE 3

COMMUNITY GUARDIANSHIP

Section 473-d. Community guardianship.

473-e. Confidentiality of protective services for adults' records.

§ 473-d. Community guardianship. 1. Definitions. When used in this

section unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "Community guardian program" means a not-for-profit corporation incorporated under the laws of the state of New York or a local governmental agency which has contracted with or has an agreement with a local social services official to provide conservatorship or committeeship services to eligible persons as provided in this title.

(b) "Hospital" means a hospital as defined in subdivision one of section two thousand eight hundred one of the public health law, or a hospital as defined in subdivision ten of section 1.03 of the mental hygiene law.

(c) "Residential facility" means a facility licensed pursuant to article twenty-eight of the public health law, article nineteen, twenty-three, thirty-one or thirty-two of the mental hygiene law, or article seven of this chapter.

2. A social services official may contract with a community guardian program for the provision of conservatorship or committeeship services. A social services official may bring a petition to appoint a community guardian program as conservator or committee for a person only if the person is:

(a) eligible for and in receipt of adult protective services, as defined in section four hundred seventy-three of this chapter, at the time of the petition; and

(b) without a capable friend or relative or responsible agency willing and able to serve as conservator or committee; and

(c) living outside of a hospital or residential facility, or living in a hospital or residential facility and appointment of the community guardian program is part of a plan to return such person to the community.

3. A contract or agreement between a local social services official and a community guardian program shall require that:

(a) the community guardian program shall make its best efforts to maintain each person for whom the community guardian program is appointed as conservator or committee in a place other than a hospital or residential facility;

(b) the community guardian program shall petition the court to relinquish its duties as conservator or committee if a person for whom the community guardian program is appointed as conservator or committee regains capacity or competence, or a capable friend or relative becomes available to serve as conservator or committee, or the person must enter a hospital or residential facility on a long-term basis;

(c) the community guardian program shall act on behalf of each person for whom the community guardian program is appointed as conservator or committee to obtain such medical, social, mental health, legal and other services as are available and to which the person is entitled and as are required for the person's safety and well-being and shall advocate for all entitlements, public benefits, and services for which the person qualifies and which the person requires;

(d) all remuneration awarded to the community guardian program by the court from the estate of a person for whom the community guardian program is appointed as conservator or committee shall be based upon the cost of the community guardian program incurred in serving such person or the fee that would otherwise be awarded by the court, whichever is the lesser, and paid over to the social services district;

(e) the files and records of the community guardian program shall be open to inspection to the local social services officials and the department;

(f) no director, officer or employee of the community guardian program shall have a substantial interest in any corporation, organization or entity that provides services to any person for whom the community guardian program is conservator or committee;

(g) the community guardian program shall obtain annually a statement prepared by a physician, psychologist, nurse clinician, or social worker, or other person evaluating the condition and functional level of a person for whom the community guardian program serves as guardian pursuant to paragraph five of subdivision (b) of section 81.31 of the mental hygiene law and the appointing court shall be informed of the results of such evaluation or examination and may discharge or modify the powers of the guardian pursuant to section 81.36 of the mental hygiene law. The person conducting the evaluation pursuant to this paragraph shall not be affiliated with a community guardian program and shall be acting within their lawful scope of practice as established

under the education law;

(h) persons hired by the community guardian program to provide services to a person for whom the community guardian program has been named conservator or committee shall have expertise in one or more of the areas of mental health services, protective services, social services or home care services or appropriate experience.

4. A local social services official shall not be relieved of any duty to provide services to a person by reason of the operation of a community guardian program in the locality or by cessation of such program in the locality.

5. The department may promulgate rules and regulations necessary to implement this title.

6. Expenditures made by a social services district, directly or through purchase of services, in petitioning for or acting as a conservator or committee, or made pursuant to contract for community guardianship services in accordance with the provisions of this title, shall be subject to reimbursement by the state, in accordance with regulations of the department, in the amount of fifty per centum of such expenditures, after first deducting therefrom any federal funds properly received or to be received on account thereof and any amounts received pursuant to paragraph (d) of subdivision three of this section.

7. Nothing in this title shall lessen or eliminate the responsibilities and powers required by law of any agency, department, or any subdivision thereof.

8. On or before December thirty-first, nineteen hundred eighty-seven, the commissioner shall submit an interim report to the governor, the temporary president of the senate and the speaker of the assembly detailing progress and evaluating results of this program. On or before December thirty-first, nineteen hundred eighty-eight, the commissioner shall submit a final report to the governor, the temporary president of the senate and the speaker of the assembly on the effectiveness of this act.

§ 473-e. Confidentiality of protective services for adults' records.

1. Definitions. When used in this section unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "Subject of a report" means a person who is the subject of a referral or an application for protective services for adults, or who is receiving or has received protective services for adults from a social services district.

(b) "Authorized representative of a subject of a report" means (i) a person named in writing by a subject to be a subject's representative for purposes of requesting and receiving records under this article; provided, however, that the subject has contract capacity at the time of the writing or had executed a durable power of attorney at a time when the subject had such capacity, naming the authorized representative as attorney-in-fact, and such document has not been revoked in accordance with applicable law; (ii) a person appointed by a court, or otherwise authorized in accordance with law to represent or act in the interests of the subject; or (iii) legal counsel for the subject.

2. Reports made pursuant to this article, as well as any other information obtained, including but not limited to, the names of referral sources, written reports or photographs taken concerning such reports in the possession of the department or a social services district, shall be confidential and, except to persons, officers and agencies enumerated in paragraphs (a) through (g) of this subdivision, shall only be released with the written permission of the person who is the subject of the report, or the subject's authorized representative, except to the extent that there is a basis for non-disclosure of such information pursuant to subdivision three of this section. Such reports and information may be made available to:

(a) any person who is the subject of the report or such person's authorized representative;

(b) a provider of services to a current or former protective services for adults client, where a social services official, or his or her designee determined that such information is necessary to determine the

need for or to provide or to arrange for the provision of such services;

(c) a court, upon a finding that the information in the record is necessary for the use by a party in a criminal or civil action or the determination of an issue before the court;

(d) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(e) a district attorney, an assistant district attorney or investigator employed in the office of a district attorney, a member of the division of state police, or a police officer employed by a city, county, town or village police department or by a county sheriff when such official requests such information stating that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, that there is reasonable cause to believe that the criminal investigation or criminal prosecution involves or otherwise affects a person who is the subject of a report, and that it is reasonable to believe that due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution;

(f) a person named as a court-appointed evaluator or guardian in accordance with article eighty-one of the mental hygiene law, or a person named as a guardian for individuals with developmental disabilities in accordance with article seventeen-A of the surrogate's court procedure act; or

(g) any person considered entitled to such record in accordance with applicable law.

3. The commissioner or a social services official may withhold, in whole or in part, the release of any information in their possession which he or she is otherwise authorized to release pursuant to subdivision two of this section, if such official finds that release of such information would identify a person who made a referral or submitted an application on behalf of a person for protective services for adults, or who cooperated in a subsequent investigation and assessment conducted by a social services district to determine a person's need for such services and the official reasonably finds that the release of such information will be detrimental to the safety or interests of such person.

4. Before releasing a record made pursuant to this article in the possession of the department or a social services district, the appropriate official must be satisfied that the confidential character of the information will be maintained in accordance with applicable law, and that the record will be used only for the purposes for which it was made available.

5. In addition to the requirements of this section, any release of confidential HIV related information, as defined in section twenty-seven hundred eighty of the public health law, shall comply with the requirements of article twenty-seven-F of the public health law.

6. When a record made under this article is subpoenaed or sought pursuant to notice to permit discovery, a social services official may move to withdraw, quash, fix conditions or modify the subpoena, or to move for a protective order, as may be appropriate, in accordance with the applicable provisions of the criminal procedure law or the civil practice law and rules, to (a) delete the identity of any persons who made a referral or submitted an application for protective services for adults on behalf of an individual or who cooperated in a subsequent investigation and assessment of the individual's needs for such services, or the agency, institution, organization, program or other entity when such persons are employed, or with which such persons are associated, (b) withhold records the disclosure of which is likely to be detrimental to the safety or interests of such persons, or (c) otherwise to object to release of all or a portion of the record on the basis that requested release of records is for a purpose not authorized under the law.

ARTICLE 10

GENERAL PROVISIONS APPLICABLE TO CHARITABLE INSTITUTIONS

Section 474. Reports to supervisors of appointments and committals to charitable institutions.

475. Reports by officers of certain institutions to clerks of

supervisors and cities.

476. Verified accounts against counties, cities and towns.

477. Dutchess county.

478. Investigation of complaints by boards of managers.

479. Designation of depository of funds.

480. Labor of children not to be hired out.

§ 474. Reports to supervisors of appointments and committals to charitable institutions. 1. Every judge, justice, superintendent or public welfare official or other person who is authorized by law to make appointments or commitments to any state charitable institution, in which the board, instruction, care or clothing is a charge against any county, town or city, shall make a written report to the clerk of the board of supervisors of the county, or of the county in which any town is situated, or to the city clerk of any city, which is liable for any such board, instruction, care or clothing, within ten days after such appointment or commitment, and shall therein state, when known, the nationality, age, sex and residence of each person so appointed or committed and the length of time of such appointment or commitment.

2. This and the two following sections shall apply to each of the asylums, reformatories, homes, retreats, penitentiaries, jails or other institutions, except public homes, in each of the counties of this state except the county of Kings, in which the board, instruction, care or clothing of persons committed thereto is, or shall be, a charge against any county or town therein.

§ 475. Reports by officers of certain institutions to clerks of supervisors and cities. 1. The keeper, superintendent, secretary, director or other proper officer of a state charitable institution to which any person is committed or appointed, whose board, care, instruction, tuition or clothing shall be chargeable to any city, town or county, shall make a written report to the clerk of such city or to the clerk of the board of supervisors of the county, or of the county in which such town is situated, within ten days after receiving such person

therein.

2. Such report shall state when such person was received into the institution, and, when known, the name, age, sex, nationality, residence, length of time of commitment or appointment, the name of the officer making the same, and the sum chargeable per week, month or year for such person.

3. If any person so appointed or committed to any such institution shall die, be removed or discharged, such officers shall immediately report to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of the city from which such person was committed or appointed, the date of such death, removal or discharge.

§ 476. Verified accounts against counties, cities and towns. 1. The officers mentioned in the last section shall annually, on or before the fifteenth day of October, present to the clerk of the board of supervisors of the county, or of the county in which such town is situated, or to the city clerk of a city from which any such person is committed or appointed, a verified report and statement of the account of such institution with such county, town or city, up to the first day of October, and in case of a claim for clothing, an itemized statement of the same; and if a part of the board, care, tuition or clothing has been paid by any person or persons, the account shall show what sum has been so paid; and the report shall show the name, age, sex, nationality and residence of each person mentioned in the account, the name of the officer who made the appointment or commitment, and the date and length of the same, and the time to which the account has been paid, and the amount claimed to such first day of October, the sum per week or per annum charged, and if no part of such account has been paid, the report shall show such fact.

2. Any officer who shall refuse or neglect to make such report shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town, city or county affected thereby.

3. The clerk of the board of supervisors who shall receive any such report or account shall file and present the same to the board of supervisors of his county on the second day of the annual meeting of the board next after the receipt of the same.

§ 477. Dutchess county. 1. All mentally ill, developmentally disabled, blind and deaf and mute persons, the expense of whose support and maintenance now is, or, under the laws of the state of New York, may become a charge upon the city of Poughkeepsie, or the county of Dutchess, exclusive of said city, or both, and who are maintained, or shall be maintained, in any of the institutions of the state of New York, shall be supported by said county of Dutchess as one district.

2. All institutions in the state of New York maintaining any such person whose support is properly chargeable, or shall be properly chargeable, to said city or county, are hereby required to render to the county treasurer of said county all bills for the support of such persons without any distinction between those persons from the different parts of said county.

3. This section shall not be held to affect chapter two hundred and eighty-six of the laws of eighteen hundred and sixty-three, an act for the better support of the poor in the city of Poughkeepsie, except as to the class of persons herein named.

§ 478. Investigation of complaints by boards of managers. Whenever the managers, directors or trustees of any asylum, hospital or other charitable institution, the managers, directors or trustees of which are appointed by the governor and senate, or by the legislature, shall deem it necessary or proper to investigate and ascertain the truth of any charge or complaint made or circulated respecting the conduct of the superintendent, assistants, subordinate officers or servants, in whatever capacity or duty employed by or under the official control of any such managers, directors or trustees, it shall be lawful for the

presiding officer for the time being of any such managers, directors or trustees, to administer oaths to all witnesses coming before them respectively for examination, and to issue compulsory process for the attendance of any witness within the state whom they may respectively desire to examine, and for the production of all papers that any such witness may possess, or have in his power, touching the matter of such complaint or investigation; and wilful false swearing by any witness who may be so examined is hereby declared to be perjury. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 479. Designation of depository of funds. 1. It shall be the duty of the board of trustees or managers of each charitable or benevolent institution in this state, supported in whole or in part by moneys received from the state, or by any county, city or town thereof, to designate by resolution, to be entered upon their minutes, some duly incorporated national or state bank or trust company as the depository of the funds of such institution.

2. After such designation, it shall be the duty of the treasurer of each such charitable or benevolent institution immediately to deposit in the bank or trust company so designated, in his name as treasurer of the institution, naming it, all funds of the institution which may come into his possession.

§ 480. Labor of children not to be hired out. It shall be unlawful for the trustees or managers of any house of refuge, reformatory or other correctional institution, to contract, hire, or let by the day, week or month, or any longer period, the services or labor of any child or children, now or hereafter committed to or incarcerated individual of such institutions.

ARTICLE 10-A

WILLIAM B. HOYT MEMORIAL CHILDREN AND FAMILY TRUST FUND ACT

Section 481-a. Legislative findings and purpose.

481-b. Short title.

481-c. Definitions.

481-d. William B. Hoyt Memorial children and family trust fund advisory board.

481-e. William B. Hoyt Memorial children and family trust fund; awarding of grants.

481-f. William B. Hoyt Memorial children and family trust fund.

§ 481-a. Legislative findings and purpose. For the past decade, society has witnessed broad changes in family structure. These changes have created unique stresses on our children as well as on those who care for them. Among the most dire results of family stresses is the increasing frequency of child abuse and maltreatment, represented by a steady increase in reports of abuse and maltreatment to the statewide central register of child abuse and maltreatment. Additionally nearly one-fifth of homicides, and an even larger proportion of assaults occur within the home between members of families. Among the contributing causes of family violence are economic stress, social isolation, drug and alcohol abuse, parental attitude regarding discipline and child rearing, as well as acceptance of violence as a way of life. The reported incidents of both adult domestic violence and child abuse and maltreatment (including intergenerational family violence) represent only a portion of the total number of incidents in the pervasive and persistent problem of family violence. The development and support of prevention programs for child abuse and maltreatment and domestic violence (including intergenerational family violence) and services to victims of family violence is, therefore, of major importance to the state.

It is the intent of the legislature that the funds for the William B. Hoyt Memorial children and family trust fund shall be a new source of funding which shall increase the funds available for prevention and treatment services to victims of family violence. The legislature does not intend that these funds be used as a substitute for any funds currently available from federal, state or local sources for the

provision of prevention or treatment services to these victims.

§ 481-b. Short title. This article shall be known and may be cited as the "William B. Hoyt Memorial children and family trust fund act".

§ 481-c. Definitions. As used in this article:

1. "Domestic violence" shall mean any crime or violation, as defined in the penal law, which has been alleged to have been committed by any family or household member against any member of the same family or household.

2. "Family or household members" shall mean persons related by consanguinity or affinity or unrelated persons who are continually or at regular intervals living or in the past continually or at regular intervals lived in the same household, including victims and persons accused of having committed acts of domestic violence.

3. "Child abuse and maltreatment" shall have the same meaning as provided for in section four hundred twelve of this chapter.

4. "Public agency" shall mean a local office, board, department, bureau, commission, division, agency, other instrumentality of local government, or public or private educational institution.

5. "Family violence" shall mean any act which would constitute domestic violence as defined in subdivision one of this section or any act which would constitute child abuse and maltreatment as defined in subdivision three of this section.

6. "Primary prevention" shall mean strengthening family functioning to insure that family violence never takes place or is less likely to occur. Primary prevention shall include: educating family or household members or prospective parents in order to avoid patterns which can lead to family violence; increasing in-home services to new and prospective

parents; strengthening the relationships among community resources, child protective service units and citizen groups to promote and encourage the development of family violence prevention programs; increasing the awareness of professionals and the public to the effects of stress, social isolation and the lack of social and parenting skills for the purpose of making available programs deemed helpful for children and adults; and any other program deemed helpful in the primary prevention of family violence.

7. "Secondary prevention" shall mean addressing the early signs of family violence or risk of family violence through treatment of presenting problems to prevent further problems from developing. Secondary prevention shall include: providing supportive services and temporary shelter to family or household members who are considered at risk of family violence; strengthening self-help groups composed of individuals with a history of or at risk of family violence; increasing in-home services to families at risk of violence; promoting and encouraging the development of community resources for the treatment of, and improving the response to family violence; providing information and referral services to resources and/or establishing linkages among services which are in the community; and any other program deemed helpful in the treatment of persons at risk of family violence.

8. "Family resource and support program" shall mean a community-based, prevention focused entity that:

(a) provides, through direct service, core services, including:

(1) parent education, support and leadership services, together with services characterized by relationships between parents and professionals that are based on equality and respect, and designed to assist parents in acquiring parenting skills, learning about child development, and responding appropriately to the behavior of their children;

(2) services to facilitate the ability of parents to serve as resources to one another (such as through mutual support and parent self-help groups);

(3) outreach services provided through voluntary home visits and other methods to assist parents in becoming aware of and able to participate

in family resources and support program activities;

(4) community and social services to assist families in obtaining community resources; and

(5) follow-up services;

(b) provides, or arranges for the provision of, other core services through contracts or agreements with other local agencies, including all forms of respite care services; and

(c) provides access to optional services, directly or by contract, purchase of service, or interagency agreement, including:

(1) child care, early childhood development and early intervention services;

(2) referral to self-sufficiency and life management skills training;

(3) referral to education services, such as scholastic tutoring, literacy training, and general educational degree services;

(4) referral to services providing job readiness skills;

(5) child abuse and neglect prevention activities;

(6) referral to services that families with children with disabilities or special needs may require;

(7) community and social service referral, including early developmental screening of children;

(8) peer counseling;

(9) referral for substance abuse counseling and treatment; and

(10) help line services.

§ 481-d. William B. Hoyt Memorial children and family trust fund advisory board. 1. There is hereby established in the department, a William B. Hoyt Memorial children and family trust fund advisory board. The board shall meet regularly for the purpose of advising and making recommendations to the department in developing program standards relating to the establishment of family violence, including intergenerational family violence, prevention and service programs, developing requests for proposals and evaluating the effectiveness of funded programs. The members of the board shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred during the performance of their duties.

2. The board shall consist of thirteen members to be appointed by the governor, two of whom shall be appointed upon the recommendation of the speaker of the assembly, one of whom shall be appointed upon the recommendation of the minority leader of the assembly, two of whom shall be appointed upon the recommendation of the temporary president of the senate, and one of whom shall be appointed upon the recommendation of the minority leader of the senate. Members of the board shall be appointed for a term of three years. The governor shall designate one member to serve as chairman of the board. To the maximum extent possible members shall be chosen to represent equally those knowledgeable in, concerned with or committed to the field of domestic violence and/or child abuse. Members of the board may be chosen from groups including but not limited to: local social services districts; local youth boards or youth bureaus; child abuse and neglect task forces; statewide coalitions against domestic violence; alcoholism services; public agencies, not-for-profit corporations and educational institutions concerned with or providing professional training in family violence and child welfare services; family violence self-help and advocacy groups; the legal, social work, mental health, medical, clergy, judicial and law enforcement professions; groups dealing with services to the abused elderly; other professionals that provide family violence services and other concerned individuals or organizations, including parents or guardians of children who were or are in receipt of services funded pursuant to this article.

§ 481-e. William B. Hoyt Memorial children and family trust fund; awarding of grants. 1. The commissioner is hereby authorized to issue grants from funds credited to the William B. Hoyt Memorial children and family trust fund as provided in section four hundred eighty-one-f of this article to public agencies or not-for-profit corporations for the purpose of establishing or extending any or all of the following:

- (a) primary prevention programs;
- (b) secondary prevention programs;
- (c) programs which provide services to victims of family violence, such as establishing temporary shelters and other emergency services; programs which provide or facilitate counseling, or other appropriate

follow-up services to victims and their family or household members; and any other program deemed helpful in the treatment of victims of family violence.

2. (a) Funds shall be awarded in the following manner: forty percent for local child abuse prevention or family resource and support programs, forty percent for local domestic violence prevention or service programs and twenty percent for regional or statewide family violence prevention programs; provided, however, that any unexpended portion of such twenty percent as allocated shall be made available for local family violence prevention programs and provided further, however, that in determining the eligibility of any regional or statewide family violence prevention program or of any local family violence prevention program for any part of such unexpended portion, the commissioner shall give first consideration to those programs which combine both child abuse prevention and domestic violence prevention.

(b) For a program which combines child abuse prevention and domestic violence prevention, the commissioner shall predetermine, to the extent feasible, the percentage of concentration for each within such program and shall apportion the total amount awarded between such forty percent allocation in the same proportion.

3. No moneys from the fund established pursuant to section four hundred eighty-one-f of this article shall be granted for services mandated under this chapter. Funds awarded to not-for-profit corporations or public agencies pursuant to the provisions of subdivision one of this section shall not be used to supplant other federal, state or local funds.

4. The commissioner, with the advice and recommendations of the William B. Hoyt Memorial children and family trust fund advisory board, shall issue requests for proposals and specify methods to evaluate the effectiveness of proposed programs. Such evaluation shall include but not be limited to the following:

(a) appropriate accounting and fiscal control procedures which shall include the filing of an annual financial statement by each provider so as to ensure the proper disbursement and accounting for funds received

by public agencies and not-for-profit corporations for services; and

(b) appropriate written records regarding the population served and type and extent of services rendered by the provider; and

(c) confidentiality standards in conformance with appropriate federal and state standards so as to ensure the confidentiality of records of persons receiving services; and

(d) nature and quality of services provided and impacts upon the populations and communities served.

5. The commissioner shall solicit and shall select proposals for the provision of services funded pursuant to this act. Public agencies and not-for-profit corporations shall be eligible for purposes of application for grants provided for herein and subject to any rules and regulations promulgated pursuant to subdivision four of this section.

6. The commissioner, with the advice of the William B. Hoyt Memorial children and family trust fund advisory board, shall publicize the availability of funds to be used for purposes of this section. The commissioner shall request, on prescribed forms, information determined to be necessary and relevant for the evaluation of each application. The commissioner may solicit comments on the applications from concerned individuals and agencies. Applications for local grants shall be submitted to the local commissioner of social services and to the local youth bureau in the locality in which the program will operate and applicants for local grants shall solicit comments on the application from such local commissioner of social services and such local youth bureau prior to submitting such application to the commissioner. Applicants shall inform the local commissioner of social services and the local youth bureau that their comments upon the application may be submitted either to the applicant or to the commissioner or to both. The commissioner shall give full consideration to any such comments received within twenty-one days after the application deadline and shall review the applications in relation to relevant local plans before approving or disapproving such applications. The commissioner shall inform the local commissioner of social services and the local youth bureau of the final disposition of the applications. No grant award shall be for a period in excess of twelve months unless renewed by the commissioner, with the

advice of the advisory board. The initial grant and the first year renewal, if any, shall not exceed one hundred percent of the cost of providing the service. The third year grant, if any, shall not exceed seventy-five percent of the initial grant. The fourth year grant and any grant thereafter, if any, shall not exceed fifty percent of the initial grant. No program shall receive funding after the fourth year unless the commissioner, annually, finds that the program effectively prevents family violence or provides a necessary service to victims of family violence.

7. Pursuant to subdivision one of this section, the commissioner shall ensure that grants are awarded evenly across the state with consideration given to geographic areas with the greatest need and that priority is given to programs:

- (a) which are innovative; or
- (b) of demonstrated effectiveness; and/or
- (c) illustrates the capacity to coordinate with established community programs; and/or
- (d) which can demonstrate a potential for future financial self-sufficiency.

8. The commissioner with the advice and recommendations of the William B. Hoyt Memorial children and family trust fund advisory board shall submit a report prior to the fifteenth day of December beginning in nineteen hundred eighty-five and annually thereafter to the governor and the legislature regarding the implementation and evaluation of the effectiveness of prevention and treatment services related to family violence. Prior to submitting such reports to the governor and the legislature, the commissioner shall permit the William B. Hoyt Memorial children and family trust fund advisory board to review and comment upon such reports. Such report shall include:

- (a) the number of persons estimated to have been assisted in programs covered by this section;
- (b) the number, recipients and amounts of grants to public agencies and not-for-profit corporations;
- (c) the amount of public and private funds used for approved programs by service type;

- (d) the amount of funds used for the administration of such services;
- (e) a description of the nature and quality of services provided and the impact upon the populations and communities served and their potential for being replicated elsewhere;
- (f) a description of how the moneys of the fund collected pursuant to section six hundred thirty-g of the tax law were utilized during the preceding calendar year, including information concerning:
 - (i) the amount of money disbursed from the fund and the distribution process used for such disbursements;
 - (ii) recipients of the expenses from the fund;
 - (iii) the amount allotted to each;
 - (iv) the purposes for which such distributions were granted; and
 - (v) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal years; and
- (g) all such other matters as may be necessary to inform the governor and the legislature regarding the implementation and evaluation of the effectiveness of programs covered by this section and the success of such programs in accomplishing the intent of the legislature.

§ 481-f. William B. Hoyt Memorial children and family trust fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a separate and distinct account, to be known as the William B. Hoyt Memorial children and family trust fund. Such account shall be classified by the comptroller as an expendable trust. Such account shall consist of any moneys appropriated to the department for the purposes of the programs authorized pursuant to this article and funds from any other source, including but not limited to, federal funds, donations from private individuals, corporations or foundations, for the implementation of programs provided for in this article. All funds received by the comptroller on behalf of the William B. Hoyt Memorial children and family trust fund shall be deposited by the comptroller to the credit of the William B. Hoyt Memorial children and family trust fund. Notwithstanding the provisions of this subdivision, funds granted to the department pursuant to the federal child abuse prevention and treatment act shall not be deposited

to the credit of the William B. Hoyt Memorial children and family trust fund.

2. Donations from private individuals, corporations, or foundations deposited in the William B. Hoyt Memorial children and family trust fund may be invested by the comptroller pursuant to the provisions of section ninety-eight-a of the state finance law. Any income from such investments shall be deposited to the credit of the William B. Hoyt Memorial children and family trust fund.

ARTICLE 10-B

STATEWIDE SETTLEMENT HOUSE PROGRAM

Section 482-a. Legislative findings and purpose.

482-b. Definitions.

482-c. Statewide settlement house program; awarding of grants.

§ 482-a. Legislative findings and purpose. The legislature finds that public policy experts and state and local agencies have been searching for a model of service delivery that will insure programmatically effective and cost-efficient delivery of services to inner-city families and neighborhoods, and that the emerging consensus is that the best models provide comprehensive, coordinated, neighborhood-based and family-focused services. The legislature further finds that New York state's existing network of fifty-eight settlement houses can contribute to providing these comprehensive, coordinated, neighborhood-based and family-focused services in a cost-effective manner, and that the capacity of these settlement houses to provide and enhance these services can be increased if the settlement houses are provided with additional resources to implement greater neighborhood outreach, to direct individuals and family members to appropriate settlement and community-based resources, to monitor the progress of these individuals, and to plan and coordinate intra-agency and community services so that community residents have easy access to a range of services that respond to the varied and often multiple needs of individuals and families.

It is the intent of the legislature to increase the funds available to settlement houses for the purpose of providing a comprehensive range of services to the residents of the neighborhoods they serve, and that funds provided pursuant to this article will be complemented by privately-raised contributions to the settlement-houses for the program services funded pursuant to this article. The legislature does not intend that these funds be used as a substitute for any funds currently available from federal, state or local sources for the provision of neighborhood-based service delivery programs provided by settlement houses.

§ 482-b. Definitions. As used in this article:

1. "Settlement house" means an independent, voluntary, not-for-profit organization demonstrating affiliation with the New York state association for settlement houses and neighborhood centers engaged in community work and social services delivery in a defined neighborhood in a municipality of the state of New York which provides comprehensive, coordinated, family-focused multi-generational human services such as child care, employment training, housing assistance counseling, youth development, educational services, senior services and arts and cultural activities, based on the needs of the neighborhood or neighborhoods served and which:

(a) has been incorporated for at least three years;

(b) is qualified as a tax-exempt organization pursuant to section 501(c)(3) of the internal revenue code;

(c) provides services to all those who live in the neighborhood or neighborhoods served without regard to race, creed, religious practice, color, sex, age, national origin, economic status, disability, or affectional preference;

(d) has an independent, autonomous board of directors which meets at regular intervals, has full authority over the policies and operations of the organization, and the membership of which includes community residents;

(e) employs appropriate staff including a position of chief executive officer;

(f) has a budget which is adopted on an annual basis by the board of directors, utilizes an accepted accounting system, and has prepared an annual fiscal audit by a certified public accountant not connected with the organization; and

(g) can demonstrate that one of its primary purposes is the improvement of the relationships among groups of different cultural, economic, religious, and social groups in the community through a variety of individual, group, and inter-group activities.

2. "Program services" may include, but are not limited to, several of the following services:

(a) early childhood services, including child care, child development services, early child education and health information and referral for pre-school children;

(b) youth services, including teen centers and school-age programs which provide recreation, homework assistance, preparation for employment, counseling and meals;

(c) education programs, including remedial education, tutoring, homework assistance and English language training;

(d) family programs, including home management, homemaker services, parenting skills training, teen parent services and programs for seniors;

(e) child welfare services including foster care and preventive services;

(f) employment programs, including summer youth employment apprentice programs, job training programs, and displaced homemaker programs;

(g) mental health services, including psychological and, where appropriate, psychiatric group and individual evaluation and counseling;

(h) housing assistance.

§ 482-c. Statewide settlement house program; awarding of grants. 1.

The commissioner is hereby authorized to issue grants for the purpose of enhancing and coordinating activities and programs, expanding programs to serve more individuals and families, and/or promoting inter-agency coordination with other neighborhood organizations offering complementary services.

2. Funds awarded to settlement houses pursuant to the provisions of subdivision one of this section shall be used to supplement and not to supplant other federal, state or local funds.

3. The commissioner shall issue requests for applications to all settlement houses and shall specify that applications include a description of the nature of the services to be provided, a discussion of the relatedness of the services to the purposes of a settlement house as defined in section four hundred eighty-two-b of this article and an estimate of the number and composition of clients to be served. Such applications may include a discussion of plans to develop or enhance outreach services to individuals and families, institute or augment assessments of individual and family needs, coordinate services, develop links with neighborhood organizations, develop employment initiatives, mentoring programs and other cooperative programs with unions, neighborhood businesses and community corporations, and identify sources of private funding. Such applications shall also include at least the following:

(a) appropriate accounting and fiscal control procedures that assure that funds are expended in accordance with this article, including the filing of an annual financial statement by each provider; and

(b) appropriate written records regarding the number of individuals and families served and the type and extent of services rendered by the settlement house.

4. The commissioner shall solicit and select applications for the provision of programs and services funded pursuant to this article. It is necessary that settlement houses receiving funding pursuant to this article demonstrate a plan to raise one dollar for each two dollars of state grants received. Subsequent year funding may be adjusted to reflect prior years' experience.

5. The commissioner may issue a request for applications to the extent funds are available on a multi-year basis.

6. The commissioner shall make grants of up to fifty thousand dollars

to settlement houses following approval of an acceptable plan submitted pursuant to the request for applications so long as there are funds available. The commissioner shall notify the local social services district of a grant award to a settlement house in that district.

ARTICLE 10-C

STATE COUNCIL ON CHILDREN AND FAMILIES

Section 483. Council on children and families; chair.

483-a. Utilization of other agency assistance.

483-b. Powers and duties of council.

483-c. Coordinated children's services for children with emotional and/or behavioral disorders.

483-d. Out-of-state placement committee.

483-e. Restraint and crisis intervention technique committee.

483-f. The children's plan.

483-g. Early childhood advisory council.

483-h. Internet mapping resource of school age child care providers and afterschool and home visiting programs.

§ 483. Council on children and families. 1. Purpose. There shall be a council on children and families, hereinafter referred to in this article as the "council". The council shall act as a neutral, coordinating agency to promote the well-being of children and families by convening the state's human services, health, and education agencies to develop aligned and comprehensive approaches to serve children and families most efficiently and effectively.

2. Council establishment. There shall be a council on children and families established within the executive department. The council shall convene the following state agency leaders: the commissioner of children and family services, the commissioner of temporary and disability assistance, the commissioner of mental health, the commissioner for people with developmental disabilities, the commissioner of addiction services and supports, the commissioner of education, the commissioner of health, the commissioner of the division of criminal justice

services, the executive director of the justice center for the protection of people with special needs, the director of aging, the commissioner of labor, and the executive director of the council on developmental disabilities.

3. Definitions. As used in this article:

(a) "Council" shall refer to the council on children and families.

(b) "Executive director" shall refer to the executive director of the council.

(c) "Member agency" shall refer to the state agencies convened by the council identified in subdivision two of this section.

4. Executive director; staffing. (a) The governor shall designate the executive director of the council.

(b) The executive director shall employ personnel to carry out the functions of the council.

5. Meetings. The council shall meet as often as deemed necessary, by the executive director or the leader of a member agency, but in no event less than annually to perform its powers and duties notwithstanding the absence of a quorum.

§ 483-a. Utilization of other agency assistance. To effectuate the purposes of this article, any department, division, board, bureau, commission or agency of the state or of any political subdivision thereof shall, at the request of the executive director, provide to the council such facilities, assistance and data as will enable the council to properly carry out its powers and duties.

§ 483-b. Powers and duties of council. 1. Definitions. As used in this section, the terms "care", "services", "programs", and "services programs" shall mean and include care, maintenance, services and programs provided to children of the state and their families by or under the jurisdiction of a member agency.

2. General powers. The council shall have the following powers:

(a) to identify problems and deficiencies in residential care and community-based services programs and, on a selective basis, to plan and make recommendations to the governor for the remedy of such problems and deficiencies and for the development of programs of care and services for children and their families;

(b) to make recommendations to improve coordination of program and fiscal resources of state-local, public-voluntary care and services to children and their families;

(c) to coordinate program and management research of member agencies for the purpose of monitoring, evaluating or redirecting existing care and services programs or developing new programs, and to conduct, sponsor, or direct member agencies to undertake such research or other activities;

(d) to review and resolve differences, if any, concerning rules and regulations of each member agency insofar as such rules and regulations impact on services programs provided by other member agencies;

(e) to promulgate, amend and rescind rules and regulations relating to the administration and performance of the powers and duties of the council pursuant to this article;

(f) to review significant state and locally operated and supported care and services, plans and proposals for new services for children and families to determine whether such services are planned, created and delivered in a coordinated, effective and comprehensive manner;

(g) to perform all other things necessary and convenient to carry out the functions, powers and duties of the council and to effectuate the purposes of this article; and

(h) to accept and expend any grants, awards, or other funds or appropriations as may be available to the council to effectuate the purposes of this article, subject to the approval of the director of the budget.

3. Interagency resolution powers. (a) The council shall convene member agencies to meet on a regular basis to discuss and resolve disputes, including but not limited to disputes between member agencies, relating to their functions, powers and duties over the provision of services to particular children and their families or to categories of children or

child and family problems when all the internal statutory and administrative grievance or appeal procedures applicable to a member agency have failed to finally resolve such dispute.

(b) The council shall direct member agencies to provide an evaluation, including a diagnostic study, of a particular child and his or her family when there is a dispute as to the appropriate agency or program in which the child should be placed or from which the child and his or her family should receive services, and, following such study, the council shall order placement of a child with a member agency, or with a social services official, or order a member agency to provide or require the provision of services to the child and his or her family in a manner consistent with the legal authority of the member agency or social services official, as applicable.

(c) The council shall direct member agencies to take appropriate direct action or to exercise their supervisory powers over local officials and agencies, in the resolution of such disputes.

(d) The duty of the council to resolve disputes involving particular children may be performed on a selective basis within the discretion of the council. Exercise of jurisdiction over such disputes by the council or appeals to the council therefor shall not be required as a condition precedent to the initiation of a proceeding pursuant to article seventy-eight of the civil practice law and rules.

(e) A dispute relative to which member agency shall have the responsibility for determining and recommending adult services pursuant to sections 7.37 and 13.37 of the mental hygiene law, section three hundred ninety-eight-c of the social services law, or subdivision ten of section forty-four hundred three of the education law shall be resolved in accordance with this subdivision.

4. Submission of information to the council. (a) Notwithstanding any other provision of state law to the contrary, the council may request any member agency to submit to the council and such member agency shall submit, to the extent permitted by federal law, all information in the form and manner and at such times as the council may require that it is appropriate to the purposes and operation of the council.

(b) The council shall protect the confidentiality of individual identifying information submitted to or provided by the council, and

prevent access thereto, by, or the distribution thereof to, persons not authorized by law.

§ 483-c. Coordinated children's services for children with emotional and/or behavioral disorders. 1. Purpose. The purpose of this section shall be to establish a coordinated system of care for children with emotional and behavioral disorders, and their families, who require assistance from multiple agency systems to appropriately maintain such children with their families, in their communities and in their local school systems. Such system of care shall provide for the effective collaboration among state and local health, mental hygiene, education, juvenile justice, probation of care and other human services agencies directed at improving outcomes for children with emotional and/or behavioral disorders and their families leading to full participation in their communities and schools. This shall include children with co-occurring disorders. The absence of coordinated care often results in inappropriate and costly institutional placements and limited community-based services that support maintaining the child in the community. Establishing the coordinated children's services initiative statewide is intended to improve the manner in which services of multiple systems are delivered and to eliminate barriers to a coordinated system of care.

2. Definitions. As used in this section:

(a) "Child with an emotional and/or behavioral disorder" shall mean a person under eighteen years of age, or a person under twenty-one years of age who has not completed secondary school, who has a mental illness, as defined in subdivision twenty of section 1.03 of the mental hygiene law, or is classified as a student with a disability pursuant to article eighty-nine of the education law or section 504 of the federal rehabilitation act, or is considered to have a serious emotional or behavioral problem, as considered by a tier I and/or tier II team representative pursuant to this section. Such term shall include children with co-occurring disorders.

(b) "Individualized family support plan" shall mean a plan developed in conjunction with the family through a strength-based child and family

assessment containing a summary of the strengths, needs and goals of a child with an emotional and/or behavioral disorder, and the services and supports agreed to by the child, family and the tier I team representatives.

(c) "Family" shall mean, when appropriate, a child with an emotional and/or behavioral disorder, his or her parents or those in parental relationship to the child, blood relatives and extended family, including non-relatives identified by the child and/or parents. Nothing in this section shall be construed to deny the child, his or her parents or those persons in parental relationship to the child of any rights they are otherwise entitled to by law.

(d) "County" shall mean a county, except in the case of a county that is wholly included within a city, such term shall mean such city.

(e) "Family support representative" shall mean a volunteer who is also a parent or primary caregiver of a child with an emotional and/or behavioral disorder. The family support representative shall assist families throughout the process of developing and implementing an individualized family support plan as defined in this section.

3. Interagency structure. (a) There shall be established a three tiered interagency structure, as follows:

(i) State tier III team. There is hereby established a state team designated as the "tier III team", which shall consist of the chair of the council, the commissioners of children and family services, mental health, health, education, alcoholism and substance abuse services, and the office for people with developmental disabilities, and the director of the office of probation and correctional alternatives, or their designated representatives, and representatives of families of children with emotional and/or behavioral disorders. Other representatives may be added at the discretion of such team.

(ii) County tier II team. A county, or consortium of counties, choosing to participate in the coordinated children's services initiative shall establish an interagency team consisting of, but not limited to, the local commissioners or leadership assigned by the chief elected official responsible for the local health, mental hygiene, juvenile justice, probation and other human services systems. The education system shall be represented by the district superintendent of

the board of cooperative educational services, or his or her designee, and in the case of the city of New York, by the chancellor of the city school district of the city of New York, or his or her designee, and appropriate local school district representatives as determined by the district superintendent of the board of cooperative educational services or such chancellor. Such team shall be sensitive to issues of cultural competence, and shall include representatives of families of children with an emotional and/or behavioral disorder. Regional state agency representatives may participate when requested by such team.

(iii) Family-based tier I team. Tier II teams, in cooperation with a child with an emotional and/or behavioral disorder and his or her family, shall establish interagency teams to work with such child and family to develop an individualized, strength-based family support plan and coordinate interagency services agreed to in such plan. Such teams shall include such child and family and, based on the needs of the child and family, should also include a family support representative, representatives from the mental hygiene, education, juvenile justice, probation, health, and other county child and family services systems.

(b) Roles and responsibilities of teams. (i) The state tier III team shall coordinate statewide implementation of the coordinated children's services initiative. Such team shall:

(A) coordinate planning across the health, mental hygiene, education, juvenile justice, probation and human services systems;

(B) address barriers to the effective delivery of local interagency services;

(C) coordinate the provision of technical assistance and training for the effective implementation of the coordinated children's services initiative;

(D) develop an appropriate reporting mechanism to track the outcomes being achieved. Such mechanism shall be developed in concert with participating counties; and

(E) report results and recommendations for change to the governor, legislature and state board of regents, as appropriate.

(ii) The tier II teams shall coordinate the coordinated children's services initiative at the local level. Such team shall:

(A) coordinate cross-systems training and provide linkages to other county and school district planning for children;

- (B) address local/regional barriers to the coordination of services;
- (C) report on state level barriers to the effective delivery of coordinated services and recommended changes to the state tier III team;
- (D) report on outcomes using the mechanism developed by the state tier III team;
- (E) implement the goals and principles of the coordinated children's services initiative; and
- (F) make monies available consistent with subdivision five of this section.

(iii) Each tier I team shall work collaboratively with the family to develop an individualized family support plan that is:

- (A) family-focused and family driven;
- (B) built on child and family strengths; and
- (C) comprehensive, including appropriate services and supports from appropriate systems and natural supports from the community.

4. Goals and principles of operation. (a) Goals. The coordinated children's services initiative shall enable children with emotional and/or behavioral disorders, whenever appropriate for the child and family to:

- (i) reside with their families;
- (ii) live and participate successfully in their communities;
- (iii) attend and be successful in their local school systems; and
- (iv) grow towards becoming independent, contributing members of the community.

(b) Principles of operation. The tier III and II teams shall provide a system for serving children with emotional and/or behavioral disorders that is:

- (i) community-based, allowing children and families to receive services close to their home;
- (ii) culturally competent;
- (iii) individualized and strengths-based in approach;
- (iv) family friendly, involving the family as full and active partners at every level of decision making, including policy development, planning, treatment and service delivery;
- (v) comprehensive, involving all appropriate parties, including but not limited to the family, child, natural supports, provider agencies

and other necessary community services;

(vi) funded through multiple systems with flexible funding mechanisms that support creative approaches;

(vii) unconditionally committed to the success of each child; and

(viii) accountable with respect to use of agreed on and measured outcomes.

5. Funding. Counties and school districts, including boards of cooperative educational services as requested by component school districts, choosing to participate in the coordinated children's services initiative, unless expressly prohibited by law, shall have the authority to:

(a) combine state and federal resources of the participating county and educational agencies to provide services to groups or individual children and their families necessary to maintain children with emotional and/or behavioral disorders in their homes, communities and schools, and support families in achieving this goal, as long as the use of the funds is consistent with the purposes for which they were appropriated; and

(b) apply flexibility in use of funds, pursuant to an individualized family-support plan, or for collaborative programs, an agreement among the county, city and school districts or the board of cooperative educational services, monies combined pursuant to paragraph (a) of this subdivision may be used to allow flexibility in determining and applying interventions that will address the unique needs of the family. The tier III team shall develop guidelines for the flexible use of funds in implementing an individualized family support plan.

6. Administration and reports. The council shall be responsible for the administration of the provisions of this section.

(a) The tier III team shall submit a report to the council detailing the effectiveness in reaching the goals and objectives of the program established by this section. Such report shall include recommendations, based on the experience gained pursuant to the provisions of this article, for modifying statewide policies, regulations or statutes. The council shall forward such report to the governor, the legislature and the state board of regents on or before the first day of July of each

year, including the recommendations of the tier III members regarding the feasibility and implications of implementing the recommendations.

(b) The tier III team shall have authority to receive funds and work within agency structures, as agreed to by member agencies, to administer funds for the purposes of carrying out its responsibilities.

(c) Parents and representatives of families, who are not compensated for attendance as part of their employment, shall be compensated for their tier III team participation and reimbursed for actual expenses, including, but not limited to, child care.

7. Confidentiality. (a) Notwithstanding any other provision of state law to the contrary, tier I, II and III team participants in the coordinated children's services system shall have access to case record and related treatment information as necessary to support the purposes of this section, to the extent permitted by federal law.

(b) Tier I, II and III team participants shall protect the confidentiality of all individual identifying case record and related treatment information, and prevent access thereto, by, or the distribution thereof to, other persons not authorized by State or federal law.

§ 483-d. Out-of-state placement committee. 1. Committee established. There is hereby established within the council an out-of-state placement committee comprised of the commissioner of children and family services, the commissioner of mental health, the commissioner of the office for people with developmental disabilities, the commissioner of education, the commissioner of alcoholism and substance abuse services, the commissioner of health, and the director of the office of probation and correctional alternatives.

2. Establishment of out-of-state placement registries. (a) Each member of the out-of-state placement committee which places or which has oversight responsibilities over agencies that place children in out-of-state congregate residential programs or residential schools shall establish a registry of congregate residential programs and/or residential schools. To the extent feasible, such registries shall be

publicly accessible via the committee member agency's website. Additionally, the council shall establish a single comprehensive registry for the listing of out-of-state congregate residential programs and residential schools that have been approved by one or more members of the out-of-state placement committee. To the extent feasible, the registry shall be internet-accessible, and shall be placed on the website of the council.

(b) The out-of-state placement committee shall develop core requirements for the inclusion of an out-of-state congregate residential program or residential school on such a registry, which shall include but may not be limited to requirements that:

(i) if the out-of-state congregate residential program or residential school provides residential care to children from New York state, at least one member of the out-of-state placement committee or his or her designee has conducted a site visit of such out-of-state congregate residential program or residential school, as appropriate, within time frames as the committee shall determine;

(ii) the out-of-state congregate residential program or residential school holds a current license or charter from the appropriate state agency or agencies of the state in which the program or facility is located;

(iii) appropriate laws and regulations exist in the state where the congregate residential program or residential school is located for the investigation and resolution of allegations of abuse or neglect;

(iv) the appropriate member or members of the out-of-state placement committee shall have evaluated the out-of-state congregate residential program or residential school to determine whether the types of care being provided are consistent with New York state law and the applicable committee member agency's regulations.

(c) Prior to placing an out-of-state congregate residential program or residential school on its registry, a member of the out-of-state placement committee shall solicit and consider any relevant information regarding the congregate residential program or residential school from other members of the out-of-state placement committee.

(d) The out-of-state placement committee in conjunction with the division of the budget shall determine the feasibility of charging fees for out-of-state congregate residential programs and residential schools

to be listed on an out-of-state placement registry.

3. Establishment of recommended contract parameters. The out-of-state placement committee shall establish recommended contract parameters for use by committee member agencies and any local agency subject to the jurisdiction of one of the committee member agencies when contracting with an out-of-state congregate residential program or residential school for the placement of a New York state child. Such contract parameters shall include but may not be limited to provisions that the out-of-state congregate residential program or residential school shall:

(a) hold and maintain a current license, certificate or charter from the appropriate state agency or agencies of the state in which the program or facility is located;

(b) promptly notify the placing state or local agency of any enforcement action taken with respect to such license, certificate or charter and any action the congregate program or facility is taking with respect thereto and that the placing agency, if it is a local agency, will notify its supervising state agency of such information;

(c) take all necessary steps to become and remain listed on the out-of-state placement registry of the applicable member or members of the out-of-state placement committee, including providing any requested information to the applicable committee member or members consistent with applicable state and federal laws and authorizing such committee member or members to conduct announced and unannounced visits to the program or facility;

(d) promptly notify the placing state or local agency of any report of abuse or neglect occurring in the program or school regarding any child placed by the state or local agency, the progress and outcome of the investigation of the report, and of any action being taken with respect thereto, and agree that the placing state or local agency will notify the parents or persons in parental relationship to the child of such report of abuse or neglect;

(e) promptly notify the placing state or local agency of any investigation of a report of abuse or neglect found to result from a systemic problem with the program or school or any portion thereof and any action that the program or school is taking with respect thereto and that the placing agency, if it is a local agency, will notify its

supervising state agency of such information; and

(f) establish, in conjunction with the placing state or local agency, appropriate services and goals for each child placed by such agency in the out-of-state program or school consistent with applicable state and federal law.

4. Model processes for placement. The out-of-state placement committee shall establish model processes for the placement of any child in an out-of-state congregate residential program or residential school which may include, but not be limited to, identifying the necessary activities that should be engaged in on a local, regional and/or state level prior to making an out-of-state placement including reviewing alternative service options to avoid an out-of-home placement and reviewing all viable and least restrictive options for placing the child in-state.

5. Technical assistance resources. The committee shall make reasonable efforts to:

(a) coordinate the development and updating by member agencies of statewide child and family services technical assistance resources which may include service directories, assessment tools, inventories of availability and capacity of in-state services, referral guides, funding maps, and information about research and evidence based practices, which, to the extent feasible, shall be made widely available through such means as web-based platforms; and

(b) establish public awareness, training and technical assistance initiatives to strengthen local and regional service coordination and streamline placement processes and access to community-based services, which include or complement existing infrastructure, by engaging local and regional service providers, educators, policy makers, family members, advocates and others.

6. Integrated funding. The committee, in conjunction with the division of the budget, shall analyze aggregate data on children who are placed in out-of-state congregate residential programs and residential schools and make recommendations concerning the development of integrated funding for the purchase of services for children with complex and/or multiply-diagnosed needs including:

(a) reducing or eliminating identified barriers to providing flexibility in the funding of programs and services for children at risk of placement in out-of-state programs and facilities and of such other children as may be appropriate;

(b) increasing the number of alternatives to placing children in out-of-state congregate residential programs or residential schools by allowing funds for services to follow the child into the most appropriate and least restrictive placement; and

(c) allowing funds for services to be applied to the purchase of appropriate services within the child's community, including modification of the child's residence, in the most flexible manner so as to serve the child in the least restrictive setting as appropriate.

7. Additional review and recommendations; report. The out-of-state placement committee may develop additional recommendations regarding a common system concerning placement of children in out-of-state programs and facilities, with the purpose of averting insofar as practicable future placement of children in such out-of-state programs and facilities, of returning children from such out-of-state programs and facilities, of building or rebuilding the infrastructure of in-state programs and facilities so that it shall be capable of serving the needs of such children, of redesigning the system to eliminate barriers and institute flexibility in funding services so that children may be provided for in the most appropriate and least restrictive environments, including the child's home, of enabling public funding for such services to follow the child, and of requiring appropriate levels of accountability concerning the placement of children at all levels of public decision-making.

The committee shall provide an annual progress report concerning the development of the items and policies described in this section and progress on their implementation, along with such recommendations as the committee shall deem appropriate and in keeping with the spirit and intent of this section. Such report shall be submitted to the governor and the legislature no later than thirty days following the submission of the executive budget.

8. Immunity from liability. Any person, official or institution complying with the requirements of this section reasonably and in good faith, including establishing or implementing out-of-state registries, contract parameters, and model processes for placement, with respect to placing a child in an out-of-state or an in-state facility or program shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions.

9. Construction with other laws; severability. If any portion of this section or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of this section or the application of any part thereof to any other person or circumstances and to this end each of the provisions of this section are hereby declared to be separable.

§ 483-e. Restraint and crisis intervention technique committee. 1. Committee established. There is hereby established within the council a restraint and crisis intervention technique committee comprised of the commissioner of children and family services, the commissioner of mental health, the commissioner of the office for people with developmental disabilities, the commissioner of education and the commissioner of health. The committee shall include at least two representatives of statewide and regional provider organizations that represent providers of educational and residential services to children, at least two mental health professionals who provide direct care on a regular basis to children served by the program types provided in subdivision two of this section and at least one representative of parents of children requiring special services.

2. Establishment of coordinated standards. The committee shall identify the most effective, least restrictive and safest techniques for the modification of a child's behavior in response to an actual or perceived threat by such child of harm or bodily injury to such child, or to another person, where such child is a resident of, or otherwise

served by a residential treatment facility, a children's day treatment program, a family based treatment home, a community residence, an individualized residential alternative, a family care home, day habilitation, day treatment, an intermediary care facility, residential habilitation, an agency operated boarding home, an approved private residential school or an approved private non-residential school. Such techniques shall include, but not be limited to, the use of physical restraint, therapeutic crisis intervention, crisis management or such other de-escalation techniques designed to help staff assist children to manage crisis situations. The committee shall review models of crisis prevention and intervention, including the use of physical restraints. The committee shall establish uniform and coordinated standards giving preference to the least restrictive alternative for the use of such techniques in such children service settings.

3. Recommendations and report. The committee shall develop additional recommendations regarding crisis intervention as it deems appropriate including, but not limited to, appropriate staffing patterns to safely implement such techniques, specific training curriculum and regulatory amendments governing the oversight of staff training efforts implemented by the commissioners. Such recommendations, together with proposed regulations relating thereto, shall be included in a report submitted to the governor and the legislature no later than September first, two thousand seven.

4. Future responsibilities. In addition to the duties provided in subdivisions one through three of this section, the committee shall have the following responsibilities:

(a) the committee shall report to the governor and legislature, on or before October thirty-first, two thousand nine, on the progress made to implement the recommendations outlined in the September, two thousand seven report; on aggregate agency-specific data and improvements in agency-specific tracking systems in order to provide evidence of system changes; and shall revise the report to specifically include children's day treatment programs and any other setting serving children that authorizes the use of restraints in each of the findings and recommendations presented in such report; and

(b) the committee shall report to the governor and legislature, no later than October thirty-first, two thousand ten, and each year thereafter, on the progress made to implement the recommendations outlined in the September, two thousand seven report, and any new recommendations made in the two thousand nine report, along with any other outstanding issues and recommendations for implementing uniform and coordinated standards that the committee deems appropriate. The committee shall include in its report the implementation of the coordinated standards by each agency, including but not limited to the revision and coordination of regulations, modifications to training curricula and staffing models, and may include a recommendation as to whether the committee should be continued as it exists, expanded, or discontinued.

§ 483-f. The children's plan. 1. The council, in accordance with section 7.43 of the mental hygiene law, shall assist the commissioner of mental health with the implementation of the children's plan, developed pursuant to chapter six hundred sixty-seven of the laws of two thousand six. State child-serving agencies involved in the development of such plan shall assist, as needed, with such plan's implementation and such agencies shall sign off on all future reports and plans. Such agencies shall include, but not be limited to, the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the commission on quality of care and advocacy for persons with disabilities, the office of children and family services, the state education department, the department of health, and the department of probation and correctional alternatives.

2. The council shall, with the approval of the child-serving agencies, submit a report to the governor and to the legislature, on or before October first, two thousand ten, and every two years after such date, on the progress of the children's plan, including the outcomes, achievements and recommendations for revision of such plan. Such report shall also be made a discrete part of the office of mental health's statewide comprehensive five year plan consistent with the requirements of subdivision (b) of section 5.07 of the mental hygiene law.

§ 483-g. Early childhood advisory council. 1. There is hereby established within the council an early childhood advisory council to promote a comprehensive and high quality early childhood system. Members of the early childhood advisory council shall be appointed by the governor and shall include, but not be limited to, to the maximum extent possible:

- (a) a representative of the office of children and family services;
- (b) a representative of the state education department;
- (c) a representative of local educational agencies;
- (d) a representative of institutions of higher education in the state;
- (e) a representative of local providers of early childhood education and development services;
- (f) a representative of head start agencies, including migrant and seasonal head start programs and Indian head start programs;
- (g) the director of the head start collaboration office;
- (h) a representative from the department of health;
- (i) a representative of the office of temporary and disability assistance;
- (j) a representative of the office of mental health;
- (k) a representative of the office for people with developmental disabilities;
- (l) a representative of the empire state development corporation;
- (m) a representative of the division of the budget;
- (n) at least five representatives of the business community; and
- (o) representatives of other entities determined to be relevant by the governor.

2. The governor shall also designate the two chairpersons to the early childhood advisory council.

3. The early childhood advisory council shall, in addition to any responsibilities assigned by the governor:

- (a) conduct a periodic statewide needs assessment concerning the quality and availability of early childhood education and development programs and services for children from birth to school entry, including

an assessment of the availability of high-quality pre-kindergarten services for low-income children in the state;

(b) identify opportunities for, and barriers to, collaboration and coordination among federally funded and state funded child development, child care, and early childhood education programs and services, including collaboration and coordination among state agencies responsible for administering such programs;

(c) develop recommendations for increasing the overall participation of children in existing federal, state, and local child care and early childhood education programs, including outreach to underrepresented and special populations;

(d) develop recommendations regarding the establishment of a unified data collection system for public early childhood education and development programs and services throughout the state;

(e) develop recommendations regarding statewide professional development and career advancement plans for early childhood educators in the state;

(f) assess the capacity and effectiveness of two-year and four-year public and private institutions of higher education in the state toward supporting the development of early childhood educators, including the extent to which such institutions have in place articulation agreements, professional development and career advancement plans, and practice or internships for students to spend time in a head start or pre-kindergarten program;

(g) develop and implement strategies to engage business and civic leaders and organizations in early learning planning and advocacy at the state and local level;

(h) increase business, civic and public awareness of the importance of early childhood education, including, but not limited to, the distribution of literature through mail or online, organizing of meetings and events to promote the cost benefit of investments in learning and the hosting of an annual economic summit on early childhood investment;

(i) develop recommendations for increasing public-private investments in early childhood and strategies for maximizing resources; and

(j) make recommendations for improvements in state early learning standards and undertake efforts to develop high-quality comprehensive

early learning standards, as appropriate.

4. Members of the early childhood advisory council shall serve on workgroups tasked with implementing the duties required pursuant to subdivision three of this section. Such workgroups may be established as needed, provided however that there shall be a permanent early learning investment workgroup focused on implementation of, at a minimum, the duties described in paragraphs (g), (h) and (i) of subdivision three of this section. Membership of the early learning investment workgroup shall include, but not be limited to, representatives of the business community appointed to the council in accordance with paragraph (n) of subdivision one of this section.

5. The early childhood advisory council shall hold public hearings and provide an opportunity for public comment on the activities described in subdivision three of this section.

6. The early childhood advisory council shall submit a statewide strategic report addressing the activities described in subdivision three of this section to the director of the head start collaboration office, the governor, the speaker of the assembly and the temporary president of the senate. After submission of a statewide strategic report, the early childhood advisory council shall meet periodically to review any implementation of the recommendations in such report and any changes in state and local needs.

§ 483-h. Internet mapping resource of school age child care providers and afterschool and home visiting programs. 1. The council, in accordance with information made available to it by the office of children and family services pursuant to section seventeen of this chapter; information provided to the council by the state education department pursuant to section three hundred five of the education law; and information provided by the department of health pursuant to section two hundred one of the public health law, shall develop and make available through a link on its website an internet mapping resource of:

(a) all recipients of competitive grants awarded or administered by

the state office of children and family services or the state education department for the purpose of providing: afterschool programs or extended learning time, including but not limited to grants for such purposes awarded under section thirty-six hundred forty-one of the education law;

(b) all registered school age child care providers registered by the office of children and family services except for those who in accordance with subdivision eight-a of section three hundred ninety of this chapter have opted out of providing information online; and

(c) all home visiting programs that meet the criteria as required by section four hundred twenty-nine of this chapter regardless of whether they have a contract with or receive funding from the state, which provide the necessary information to the office of children and family services required pursuant to subdivision (i) of section seventeen of this chapter, or the department of health as required by paragraph (w) of subdivision one of section two hundred one of the public health law.

2. The internet mapping resource shall include the following information for each grant recipient, provider or program: (a) the recipient's, or provider's or program's name; (b), the address at which the recipient, provider or program is offered except for those who in accordance with subdivision eight-a of section three hundred ninety of this chapter have opted out of providing information online;; (c) the phone number for the recipient, provider or program; and (d) a general description of eligible individuals and families served by the particular recipient, provider or program.

3. The internet mapping resource described in subdivision one of this section shall be updated no less than once a year.

4. The council may include locations and information for additional relevant programs as it sees fit.

ARTICLE 10-D

SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

Section 483-aa. Definitions.

- 483-bb. Services for victims of human trafficking.
- 483-cc. Confirmation as a victim of human trafficking.
- 483-dd. Law enforcement assistance with respect to immigration.
- 483-ee. Establishment of interagency task force on human trafficking.
- 483-ff. National human trafficking resource center hotline poster.

§ 483-aa. Definitions. The following definitions shall apply to this article:

(a) "Human trafficking victim" means a person who is a victim of sex trafficking as defined in section 230.34 of the penal law or a victim of labor trafficking as defined in section 135.35 of the penal law.

(b) "Pre-certified victim of human trafficking" is a person who has a pending application for federal certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) but has not yet obtained such certification, or a person who has reported a crime to law enforcement and it reasonably appears to law enforcement that the person is such a victim.

(c) "Short-term safe house" means a residential facility operated by a not-for-profit agency with experience in providing services to human trafficking victims, that provides emergency shelter, services and care to human trafficking victims including food, shelter, clothing, medical care, counseling and appropriate crisis intervention services and promotes a safe living environment.

(d) "Long-term safe house" means a residential facility operated by a not-for-profit agency with experience in providing services to human trafficking victims, that provides shelter for human trafficking victims and promotes a safe living environment. In addition, a long-term safe house shall provide or assist with securing necessary services for such human trafficking victims either through direct provision of services, or through written agreements with other community and public agencies for the provision of services including but not limited to housing, assessment, case management, medical care, legal, mental health and substance use disorder services. Such safe house, in accordance with a

service plan for such human trafficking victim, shall also provide counseling and therapeutic services, educational services including life skills services, job training and placement and planning services to successfully transition such person back into the community.

§ 483-bb. Services for victims of human trafficking. (a) The office of temporary and disability assistance may coordinate with and assist law enforcement agencies and district attorney's offices to access appropriate services for human trafficking victims.

(b) The office of temporary and disability assistance shall enter into contracts with non-government organizations for providing services to victims of human trafficking as defined in subdivision (a) of section four hundred eighty-three-aa of this article. Such services shall be culturally competent, to the extent practicable, and shall include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States. Such services shall also include appropriate voluntary placement in a short-term and/or long-term safe house, as such terms are defined under subdivision (c) or (d) of section four hundred eighty-three-aa of this article. Placement in a safe house shall be available from the initial point of contact between the human trafficking victim and any of the following: law enforcement; a local social services district; or a social or legal services provider.

Nothing in this article shall prevent placement in a safe house of a human trafficking victim who is: (1) involved in a proceeding which has not reached final disposition, for the duration of such proceeding; (2) not involved in a pending proceeding; or (3) participating in a program for victims of domestic violence and has been identified as a victim of human trafficking. Nothing in this article shall preclude the office of temporary and disability assistance, or any local social services district, from providing human trafficking victims who are United States citizens or human trafficking victims who meet the criteria pursuant to

section one hundred twenty-two of this chapter with any benefits or services for which they otherwise may be eligible.

(c) (i) An individual who is a victim of the conduct prohibited by section 230.33, 230.34, 230.34-a, 135.35 or 135.37 of the penal law may bring a civil action against the perpetrator or whoever knowingly advances or profits from, or whoever should have known he or she was advancing or profiting from, an act in violation of section 230.33, 230.34, 230.34-a, 135.35 or 135.37 of the penal law to recover actual, compensatory and punitive damages, injunctive relief, any combination of those or any other appropriate relief, as well as reasonable attorney's fees.

(ii) An action brought pursuant to this subdivision shall be commenced within fifteen years of the date on which the trafficking victim was freed from the trafficking situation or, if the victim was a minor when the act of human trafficking against the victim occurred, within fifteen years after the date the victim attains the age of majority.

(iii) If a person entitled to sue is under a disability at the time the cause of action accrues so that it is impossible or impracticable for him or her to bring an action under this subdivision, the time of the disability is not part of the time limited for the commencement of the action. Disability will toll the running of the statute of limitations for this action.

(A) Disability includes being a minor, lacking legal capacity to make decisions, imprisonment, or other incapacity or incompetence.

(B) The statute of limitations shall not run against a victim who is a minor or who lacks the legal competence to make decisions simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a victim's action within the applicable limitation period will not prejudice the victim's right to do so after his or her disability ceases.

(C) The perpetrator is estopped from asserting a defense of the statute of limitations when the expiration of the statute is due to conduct by such perpetrator inducing the victim to delay the filing of the action, or due to threats made by the perpetrator causing duress upon the victim.

(D) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims

arising out of the trafficking situation.

(E) The running of the statute of limitations is postponed during the pendency of criminal proceedings against the victim.

(iv) The running of the statute of limitations may be suspended if a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(v) A prevailing victim may also be awarded reasonable attorney's fees and litigation costs including, but not limited to, expert witness fees and expenses as part of the costs.

(vi) Restitution paid by the perpetrator to the victim shall be credited against a judgment, award, or settlement obtained pursuant to an action under this subdivision.

(vii) A civil action filed under this subdivision shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. As used in this subdivision, a "criminal action" includes investigation and prosecution, and is pending until a final adjudication in the trial court or dismissal.

§ 483-cc. Confirmation as a victim of human trafficking. (a) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency, district attorney's office, or an established provider of social or legal services designated by the office of temporary and disability assistance, the office for the prevention of domestic violence or the office of victim services to be a human trafficking victim, that law enforcement agency or district attorney's office shall notify the office of temporary and disability assistance and the division of criminal justice services that such person may be eligible for services under this article or, in the case of an established provider of social or legal services, shall notify the office of temporary and disability assistance and the division of criminal justice services if such victim consents to seeking services pursuant to this article.

(b) Upon receipt of such a notification, the division of criminal

justice services, in consultation with the office of temporary and disability assistance and the referring agency or office, shall make a preliminary assessment of whether such victim or possible victim appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) or appears to be otherwise eligible for any federal, state or local benefits and services. If it is determined that the victim appears to meet such criteria, the office of temporary and disability assistance shall report the finding to the victim, and to the referring law enforcement agency or district attorney's office, and may assist that agency or office in having such victim receive services from a case management provider who may be under contract with the office of temporary and disability assistance, or from any other available source. If the victim or possible victim is under the age of eighteen, the office of temporary and disability assistance also shall notify the local department of social services in the county where the child was found.

(c) Promptly upon an encounter with a person who reasonably appears to a law enforcement agency or district attorney's office to be a human trafficking victim, or a person who identifies himself or herself as a human trafficking victim, such law enforcement agency or district attorney's office shall advise such person of the availability of the services of specific, established providers of social and legal services to human trafficking victims. Each local department of social services shall maintain and shall update, at least once annually, a list of established providers of social and legal services to human trafficking victims within the social services district, which shall be provided, at least once annually, to law enforcement agencies and district attorney's offices within the district. In order to communicate effectively with such person, the law enforcement agency or district attorney's office may provide such individual with a brochure or other written material, including by informing the individual where such written materials are available online, translated into the six most common non-English languages spoken by individuals with limited English proficiency in the state or in the applicable county, city, or town; provided, however, where such person is not proficient in one of such languages, the law enforcement agency or district attorney's office shall make reasonable

efforts to communicate effectively with such person, using an interpreter or interpretation services, where practicable. Unless, after receiving such advice, the apparent victim expresses that he or she does not wish the presence of a representative of such an established provider of social or legal services, the law enforcement agency or district attorney's office shall offer to contact the appropriate provider or providers and connect such provider or providers with the apparent victim. Nothing in this subdivision shall affect any obligation such law enforcement agency or district attorney's office may have to provide any information or assistance to such person.

§ 483-dd. Law enforcement assistance with respect to immigration. Upon the request of a human trafficking victim or a representative of a human trafficking victim, the state or local law enforcement agency or district attorney's office shall provide the victim with the United States Citizenship and Immigration Service (USCIS) Form I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. In order to provide persuasive evidence, the state or local law enforcement agency endorsement must contain a description of the victimization upon which the application is based, including the dates the trafficking in persons occurred. The endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor servitude or services or for the purposes of a commercial sex act as defined in subdivision three of section 7102 of title 22 of the United States Code.

*** § 483-ee. Establishment of interagency task force on human trafficking.** (a) There is established an interagency task force on trafficking in persons, which shall consist of the following members or their designees: (1) the commissioner of the division of criminal justice services; (2) the commissioner of the office of temporary and disability assistance; (3) the commissioner of health; (4) the commissioner of the office of mental health; (5) the commissioner of labor; (6) the commissioner of the office of children and family services; (7) the commissioner of the office of addiction services and

supports; (8) the director of the office of victim services; (9) the executive director of the office for the prevention of domestic violence; (10) the superintendent of the division of state police; (11) the secretary of state; (12) the commissioner of the department of transportation; (13) the commissioner of the department of motor vehicles; (14) the executive director of the New York state thruway authority; and the following additional members, who shall be promptly appointed by the governor, each for a term of two years, provided that such person's membership shall continue after such two year term until a successor is appointed and provided, further, that a member may be reappointed if again recommended in the manner specified in this subdivision: (15) two members, who shall be appointed on the recommendation of the temporary president of the senate; (16) two members, who shall be appointed on the recommendation of the speaker of the assembly; (17) two members, who shall be appointed on the recommendation of the not-for-profit organization in New York state that receives the largest share of funds, appropriated by and through the state budget, for providing services to victims of human trafficking, as shall be identified annually in writing by the director of the budget; and (18) one member, who shall be appointed on the recommendation of the president of the New York state bar association; and others as may be necessary to carry out the duties and responsibilities under this section. The task force will be co-chaired by the commissioners of the division of criminal justice services and the office of temporary and disability assistance, or their designees. It shall meet as often as is necessary, but no less than three times per year, and under circumstances as are appropriate to fulfilling its duties under this section. All members shall be provided with written notice reasonably in advance of each meeting with date, time and location of such meeting.

(b) The task force shall: (1) collect and organize data on the nature and extent of trafficking in persons in the state; (2) identify available federal, state and local programs that provide services to victims of trafficking, including but not limited to case management, housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the

individual and any of his or her family members to establish a permanent residence in New York state or the United States; (3) consult with governmental and non-governmental organizations in developing recommendations to strengthen state and local efforts to prevent trafficking, protect and assist victims of trafficking and prosecute traffickers; (4) establish interagency protocols and collaboration between federal, state, and local law enforcement, state and governmental agencies, child welfare agencies, and non-governmental organizations; (5) evaluate approaches to increase public awareness about trafficking and make recommendations on such approaches; (6) evaluate the effectiveness of training programs on human trafficking that have been designed for law enforcement personnel, criminal defense attorneys, social service providers and non-governmental organizations, and make recommendations for improving the quality and effectiveness of such programs; (7) measure and evaluate the progress of the state in preventing trafficking, protecting and providing assistance to victims of trafficking, and prosecuting persons engaged in trafficking; (8) evaluate the use of social media in and its contribution to human trafficking; and (9) convene any subcommittee necessary, provided such subcommittee has at least one of the members appointed by the speaker of the assembly, temporary president of the senate or governor, to consider specific issues, including, but not limited to: federal, state and/or local cooperation; juveniles and human trafficking; the importance of training and who should receive such training; how data is compiled and shared; and services for and treatment of domestic versus foreign born victims.

(c) The task force shall report to the governor, the speaker of the assembly, the minority leader of the assembly, the temporary president of the senate and the minority leader of the senate no less than annually, and it shall additionally issue such reports and recommendations as it deems necessary to carry out its duties and responsibilities.

* NB Repealed September 1, 2027

§ 483-ff. National human trafficking resource center hotline poster.

(a) The commissioner of temporary and disability assistance shall make

publicly available on its website an electronic version of the National Human Trafficking Resources Center (NHTRC) hotline poster, or create and make available a variation thereof.

(b) The poster shall:

(1) be available for printing, at a minimum, in English and all other languages that the NHTRC poster is available in;

(2) be at least eight and one-half inches by eleven inches in size; and

(3) if created by the commissioner, include the following statement:

"If you or someone you know is being forced to engage in any activity and cannot leave - whether it is commercial sex, housework, farm work, or any other similar activity - call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services.

Victims of human trafficking are eligible for protections and services under United States and New York state law.

The hotline is:

(1) Available twenty-four hours a day, seven days a week;

(2) Toll free;

(3) Operated by a non-profit, non-governmental organization;

(4) Anonymous and confidential;

(5) Accessible in one hundred seventy languages; and

(6) Able to provide help, referral to services, training, and general information."

(c) The commissioner shall consult with other state agencies and organizations that he or she deems appropriate to encourage that such posters are located in public places where trafficking victims may be present, including but not limited to: highway rest stops, bus stations, truck stops, airports, adult or sexually oriented businesses, hospitals and urgent care centers. In consulting with such agencies and organizations, the commissioner shall advise that posters should be placed in conspicuous locations near primary public entrances or other areas where posters and notices are customarily posted on the premises.

ARTICLE 11

PROTECTION OF PEOPLE WITH SPECIAL NEEDS

Section 488. Definitions.

489. Applicability.

490. Incident management programs.

491. Duty to report incidents.

492. Vulnerable persons' central register.

493. Abuse and neglect findings; consequences.

494. Amendments to and appeals of substantiated reports of abuse or neglect.

495. Register of substantiated category one cases of abuse or neglect.

496. Confidentiality.

497. Immunity from liability.

§ 488. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Reportable incident" shall mean the following conduct that a mandated reporter is required to report to the vulnerable persons' central register:

(a) "Physical abuse," which shall mean conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient or causing the likelihood of such injury or impairment. Such conduct may include but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.

(b) "Sexual abuse," which shall mean any conduct by a custodian that subjects a person receiving services to any offense defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law; or any conduct or communication by such custodian that allows, permits, uses or encourages a service recipient to engage in any act described in articles two hundred thirty or two hundred sixty-three of the penal law. For purposes of this paragraph only, a person with a developmental

disability who is or was receiving services and is also an employee or volunteer of a service provider shall not be considered a custodian if he or she has sexual contact with another service recipient who is a consenting adult who has consented to such contact.

(c) "Psychological abuse," which shall mean conduct by a custodian intentionally or recklessly causing, by verbal or non-verbal conduct, a substantial diminution of a service recipient's emotional, social or behavioral development or condition, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor, or causing the likelihood of such diminution. Such conduct may include but shall not be limited to intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a service recipient as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury, taunts, derogatory comments or ridicule.

(d) "Deliberate inappropriate use of restraints," which shall mean the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is deliberately inconsistent with a service recipient's individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any other person. For purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body.

(e) "Use of aversive conditioning," which shall mean the application of a physical stimulus that is intended to induce pain or discomfort in order to modify or change the behavior of a person receiving services in the absence of a person-specific authorization by the operating, licensing or certifying state agency pursuant to governing state agency regulations. Aversive conditioning may include but is not limited to, the use of physical stimuli such as noxious odors, noxious tastes, blindfolds, the withholding of meals and the provision of substitute foods in an unpalatable form and movement limitations used as

punishment, including but not limited to helmets and mechanical restraint devices.

(f) "Obstruction of reports of reportable incidents," which shall mean conduct by a custodian that impedes the discovery, reporting or investigation of the treatment of a service recipient by falsifying records related to the safety, treatment or supervision of a service recipient, actively persuading a mandated reporter from making a report of a reportable incident to the statewide vulnerable persons' central register with the intent to suppress the reporting of the investigation of such incident, intentionally making a false statement or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with governing state agency regulations, policies or procedures; or, for a mandated reporter who is a custodian as defined in subdivision two of this section, failing to report a reportable incident upon discovery.

(g) "Unlawful use or administration of a controlled substance," which shall mean any administration by a custodian to a service recipient of: a controlled substance as defined by article thirty-three of the public health law, without a prescription; or other medication not approved for any use by the federal food and drug administration, except for the administration of medical cannabis when such administration is in accordance with article three of the cannabis law, and any regulations promulgated thereunder, as well as the policies or procedures of the facility or provider agency governing such custodians. It also shall include a custodian unlawfully using or distributing a controlled substance as defined by article thirty-three of the public health law, at the workplace or while on duty.

(h) "Neglect," which shall mean any action, inaction or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of a service recipient. Neglect shall include, but is not limited to: (i) failure to provide proper supervision, including a lack of proper supervision that results in conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian; (ii) failure to provide adequate food,

clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules or regulations promulgated by the state agency operating, certifying or supervising the facility or provider agency, provided that the facility or provider agency has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals; or (iii) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article sixty-five of the education law and/or the individual's individualized education program.

(i) "Significant incident" shall mean an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services and shall include but shall not be limited to:

(1) conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian; or

(2) conduct on the part of a custodian, which is inconsistent with a service recipient's individual treatment plan or individualized educational program, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a person receiving services, including but not limited to:

(A) unauthorized seclusion, which shall mean the placement of a person receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will;

(B) unauthorized use of time-out, which shall mean the use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming but shall not include the use of a time-out as an emergency intervention to protect the health or safety of the individual or other persons;

(C) except as provided for in paragraph (g) of subdivision one of this

section, the administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on a service recipient. For purposes of this paragraph, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of a service recipient;

(D) inappropriate use of restraints, which shall mean the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is inconsistent with a service recipient's individual plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies. For the purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body; or

(3) any other conduct identified in regulations of the state oversight agency, pursuant to guidelines or standards established by the executive director.

2. "Custodian" means a director, operator, employee or volunteer of a facility or provider agency; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the facility or provider agency.

3. "Executive director" shall mean the executive director of the justice center for the protection of people with special needs as established by article twenty of the executive law.

4. "Facility" or "provider agency" shall mean:

(a) a facility or program in which services are provided and which is operated, licensed or certified by the office of mental health, the office for people with developmental disabilities or the office of

addiction services and supports, including but not limited to psychiatric centers, inpatient psychiatric units of a general hospital, developmental centers, intermediate care facilities, community residences, group homes and family care homes, provided, however, that such term shall not include a secure treatment facility as defined in section 10.03 of the mental hygiene law, services defined in paragraphs four and five of subdivision (a) of section 16.03 of the mental hygiene law, or services provided in programs or facilities that are operated by the office of mental health and located in state correctional facilities under the jurisdiction of the department of corrections and community supervision;

* (a-1) an integrated behavioral health services program licensed under section 36.08 of the mental hygiene law;

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

(b) any program or facility that is operated by the office of children and family services for juvenile delinquents or juvenile offenders placed in the custody of the commissioner of such office and any residential programs or facilities licensed or certified by the office of children and family services, excluding foster family homes and residential programs for victims of domestic violence;

(c) adult care facilities, which shall mean adult homes or enriched housing programs licensed pursuant to article seven of this chapter: (i) (A) that have a licensed capacity of eighty or more beds; and (B) in which at least twenty-five percent of the residents are persons with serious mental illness as defined by subdivision fifty-two of section 1.03 of the mental hygiene law; (ii) but not including an adult home or enriched housing program which is authorized to operate fifty-five percent or more of its total licensed capacity of beds as assisted living program beds pursuant to section four hundred sixty-one-1 of this chapter;

(d) any overnight, summer day and traveling summer day camps for children with developmental disabilities as defined in regulations promulgated by the commissioner of health; or

(e) the New York state school for the blind and the New York state school for the deaf, which operate pursuant to articles eighty-seven and

eighty-eight of the education law; an institution for the instruction of the deaf and the blind which has a residential component and is subject to the visitation of the commissioner of education pursuant to article eighty-five of the education law with respect to its day and residential components; special act school districts serving students with disabilities; or in-state private schools which have been approved by the commissioner of education for special education services or programs, and which have a residential program.

4-a. "State oversight agency" shall mean the state agency that operates, licenses or certifies an applicable facility or provider agency; provided however that such term shall only include the following entities: the office of mental health, the office for people with developmental disabilities, the office of alcoholism and substance abuse services, the office of children and family services, the department of health and the state education department. "State oversight agency" does not include agencies that are certification agencies pursuant to federal law or regulation.

5. "Mandated reporter" shall mean a custodian or a human services professional, but shall not include a service recipient.

5-a. "Human services professional" shall mean any: physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; licensed practical nurse; nurse practitioner; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed behavior analyst; certified behavior analyst assistant; licensed speech/language pathologist or audiologist; licensed physical therapist; licensed occupational therapist; hospital personnel engaged in the admission, examination, care or treatment of persons; Christian Science practitioner; school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative

license or certificate; full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; any other child care or foster care worker; mental health professional; person credentialed by the office of alcoholism and substance abuse services; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official.

6. "Physical injury" and "impairment of physical condition" shall mean any confirmed harm, hurt or damage resulting in a significant worsening or diminution of an individual's physical condition.

7. "Delegate investigatory entity" shall mean a facility or provider agency, or any other entity authorized by the regulations of a state oversight agency or the justice center for the protection of people with special needs to conduct an investigation of a reportable incident.

8. "Justice center" shall mean the justice center for the protection of people with special needs.

9. "Person receiving services," or "service recipient" shall mean an individual who resides or is an inpatient in a residential facility or who receives services from a facility or provider agency.

10. "Personal representative" shall mean a person authorized under state, tribal, military or other applicable law to act on behalf of a vulnerable person in making health care decisions or, for programs that serve children under the jurisdiction of the state education department or the office of children and family services, the service recipient's parent, guardian or other person legally responsible for such person.

11. "Abuse or neglect" shall mean the conduct described in paragraphs (a) through (h) of subdivision one of this section.

12. "Subject of the report" shall mean a custodian, as defined in subdivision two of this section, who is reported to the vulnerable persons' central register for the alleged abuse or neglect of a

vulnerable person as defined in subdivision eleven of this section.

13. "Other persons named in the report" shall mean and be limited to the following persons who are named in a report to the vulnerable persons' central register other than the subject of the report: the service recipient whose care and treatment is the concern of a report to the vulnerable persons' central register, and the personal representative, if any, as defined in subdivision ten of this section.

14. "Vulnerable persons' central register" shall mean the statewide central register of reportable incidents involving vulnerable persons, which shall operate in accordance with section four hundred ninety-two of this article.

15. "Vulnerable person" shall mean a person who, due to physical or cognitive disabilities, or the need for services or placement, is receiving services from a facility or provider agency.

16. "Intentionally" and "recklessly" shall have the same meanings as provided in subdivisions one and three of section 15.05 of the penal law.

§ 489. Applicability. The provisions of this article shall apply to facilities and provider agencies provided, however, nothing in this article shall be deemed to relieve any facility or provider agency or custodian thereof covered by this article of its or their obligations to comply with the requirements of federal laws or regulations to which that facility, provider agency or custodian thereof is subject, including any requirements that are a condition of federal financial participation in medical assistance payments. To the extent that federal requirements conflict with any of the provisions in this article, the federal requirements shall supersede the conflicting provisions in this article with respect to any such facility or provider agency.

§ 490. Incident management programs. 1. Each state oversight agency,

as defined in this article, shall promulgate regulations approved by the justice center, that contain procedures and requirements consistent with guidelines and standards developed by the justice center, addressing the following issues relating to an incident management program; provided, however, that regulations of the state education department need not be approved by the justice center, but shall be developed in consultation with the justice center:

(a) all reportable incidents are identified and reported in a timely manner in accordance with this article;

(b) all reportable incidents are promptly investigated;

(c) individual reportable incidents, and incident patterns and trends, are reviewed to identify and implement preventive and corrective actions, which may include, but shall not be limited to, staff retraining or any appropriate disciplinary action allowed by law or contract, as well as opportunities for improvement;

(d) patterns and trends in the reporting and response to allegations of reportable incidents are reviewed and plans of improvement are timely developed based on such reviews;

(e) information regarding individual reportable incidents, incident patterns and trends, and patterns and trends in the reporting and response to reportable incidents is shared, consistent with applicable law, with the justice center, in the form and manner required by the justice center and, for facilities or provider agencies that are not state operated, with the applicable state oversight agency which shall provide such information to the justice center;

(f) incident review committees are established; provided, however, that the regulations may authorize an exemption from this requirement, when appropriate, based on the size of the facility or provider agency or other relevant factors. Such committees shall be composed of members of the governing body of the facility or provider agency and other persons identified by the director of the facility or provider agency, including some members of the following: direct support staff, licensed health care practitioners, service recipients and representatives of family, consumer and other advocacy organizations, but not the director of the facility or provider agency. Such committee shall meet regularly to: (i) review the timeliness, thoroughness and appropriateness of the facility or provider agency's responses to reportable incidents; (ii)

recommend additional opportunities for improvement to the director of the facility or provider agency, if appropriate; (iii) review incident trends and patterns concerning reportable incidents; and (iv) make recommendations to the director of the facility or provider agency to assist in reducing reportable incidents. Members of the committee shall be trained in confidentiality laws and regulations, and shall comply with section seventy-four of the public officers law; and

(g) safe storage, administration, and diversion prevention policies regarding controlled substances and medical cannabis.

2. Notwithstanding any other provision of law, except as may be provided by section 33.25 of the mental hygiene law, records, reports or other information maintained by the justice center, state oversight agencies, delegate investigatory entities, and facilities and provider agencies regarding the deliberations of an incident review committee shall be confidential, provided that nothing in this article shall be deemed to diminish or otherwise derogate the legal privilege afforded to proceedings, records, reports or other information relating to a quality assurance function, including the investigation of an incident reported pursuant to section 29.29 of the mental hygiene law, as provided in section sixty-five hundred twenty-seven of the education law. For purposes of this section, a quality assurance function is a process for systematically monitoring and evaluating various aspects of a program, service or facility to ensure that standards of care are being met.

3. No member of an incident review committee performing a quality assurance function shall be permitted or required to testify in a judicial or administrative proceeding with respect to quality assurance findings, recommendations, evaluations, opinions or actions taken, except that this provision is not intended to relieve any state oversight agency, delegate investigatory entity, facility or provider agency, or an agent thereof, from liability arising from treatment of a service recipient.

4. There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any person on account of participating in good faith and with reasonable care in the

communication of information in the possession of such person to an incident review committee, or on account of any recommendation or evaluation regarding the conduct or practices of any custodian that is made in good faith and with reasonable care.

5. With respect to the implementation of incident management plans in residential schools or facilities located outside of New York state, each state oversight agency shall require that: (a) the justice center, the applicable state oversight agency and any local social services district and/or local educational agency placing an individual with such facility or school or state agency funding the placement of an individual or student be notified immediately of any allegation of abuse or neglect involving that individual or student; (b) an investigation be conducted by the justice center, or where that is not practicable, by a state agency or other entity authorized or required to investigate complaints of abuse or neglect under the laws of the state in which the facility or school is located; and (c) the findings of such investigation be forwarded to the justice center and each placing entity or funding agency in New York state within ninety days. Failure to comply with the requirements of this section shall be grounds for revocation or suspension of the license or approval of the out of state facility or school.

6. Records of facilities or provider agencies not otherwise subject to article six of the public officers law shall be made available for public inspection and copying, when such records relate to abuse and neglect of vulnerable persons, to the same extent that those records would be available from a state agency, as defined in such article. Requests for such records shall be made in writing to the justice center. The justice center may deny access to records of such facilities or provider agencies, or portions thereof, that the justice center determines would be exempt from disclosure by a state agency pursuant to such article. The requesting party may appeal a denial of access to such records to the executive director of the justice center. A requesting party denied access to a record in such appeal determination may bring a proceeding for review of such denial pursuant to article seventy-eight of the civil practice law and rules. The executive director of the

justice center shall promulgate regulations, consistent with the provisions of article six of the public officers law providing for the prompt response to such requests. Facilities or provider agencies covered by this subdivision shall cooperate with the justice center and provide any records that the justice center deems subject to disclosure.

§ 491. Duty to report incidents. 1. (a) Mandated reporters shall report allegations of reportable incidents to the vulnerable persons' central register as established by section four hundred ninety-two of this article and in accordance with the requirements set forth therein.

(b) Allegations of reportable incidents shall be reported immediately to the vulnerable persons' central register upon discovery. For purposes of this article, "discovery" occurs when the mandated reporter witnesses a suspected reportable incident or when another person, including the vulnerable person, comes before the mandated reporter in the mandated reporter's professional or official capacity and provides the mandated reporter with reasonable cause to suspect that the vulnerable person has been subjected to a reportable incident. A report to the register shall include the name, title and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident. Nothing in this subdivision shall be construed to prohibit a mandated reporter from contacting or reporting to law enforcement or emergency services before or after reporting to the vulnerable persons' central register.

(c) The substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to the treatment of a patient or client of a mandatory reporter who reports a reportable incident of such patient or client pursuant to this article, must be provided by such mandatory reporter upon request of the justice center for the protection of people with special needs if such records are essential for a full investigation of such allegation, notwithstanding any applicable privilege which would otherwise bar the disclosure of such materials and records pursuant to article forty-five of the civil practice law and rules or other provision of law except applicable federal law governing the disclosure of patient and related medical records.

(d) Every mandated reporter is required to make a report to the register as outlined in paragraph (b) of this subdivision unless (i) the reporter has actual knowledge that the reportable incident has been reported to the register; and (ii) that the reporter has been named as a person with knowledge of the incident in such prior report.

2. Any person or official required to report allegations of reportable incidents pursuant to this section may take or cause to be taken color photographs of visible trauma and the face of the vulnerable person named in the report and upon the consent of a person authorized to consent to medical care for the vulnerable person, shall, if medically indicated, cause to be performed a radiological examination of the vulnerable person. Any photographs or radiological examinations taken shall be provided to the justice center for use only for the purposes of an investigation of a reportable incident.

3. (a) Any human services professional required by this article to report a case of suspected abuse or neglect to the vulnerable persons' central register who knowingly and willfully fails to do so shall be guilty of a class A misdemeanor.

(b) A mandated reporter who knowingly and willfully fails to report a case of suspected abuse or neglect to the vulnerable persons' central register may be subject to termination, subject to any applicable collective bargaining agreement. Any person or official required by this article to report a case of suspected abuse or neglect to the vulnerable persons' central register who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure.

4. A medical or other public or private institution, state agency, school, facility or provider agency or its vendors or contractors shall not take any retaliatory personnel action, as such term is defined in paragraph (e) of subdivision one of section seven hundred forty of the labor law, against an employee or agent or vendor or contractor because such employee or agent or vendor or contractor believes that he or she has reasonable cause to suspect that a vulnerable person has been subjected to a reportable incident and that employee or agent or vendor

or contractor therefore makes a report in accordance with this section and/or cooperated with the investigation of a reportable incident. A court of competent jurisdiction may grant injunctive relief to any person determined to have been subjected to such retaliation.

5. State oversight agencies shall ensure that all facilities or provider agencies operated, licensed, or certified by such state oversight agencies have policies and procedures in place to identify and report possible crimes against a service recipient by a custodian. State oversight agencies shall provide guidance to facilities or provider agencies operated, licensed, or certified by such state oversight agencies that do not already have policies and procedures for the identification and reporting of possible crimes.

§ 492. Vulnerable persons' central register. 1. There shall be established in the justice center a statewide vulnerable persons' central register. The register shall: (a) receive reports of allegations of reportable incidents involving persons receiving services in facilities or provider agencies subject to the requirements of this article; (b) as warranted, refer reports alleging crimes to appropriate law enforcement authorities; (c) notify appropriate persons and officials of received and accepted reports; and (d) maintain an electronic database of each report and the finding associated with each report. In accordance with this section, the executive director shall establish standards and procedures for the operation of the vulnerable persons' central register.

2. (a) The vulnerable persons' central register shall be staffed by persons with at least a baccalaureate or equivalent college degree in a relevant field of study or at least two years of experience in the direct provision of services, adult or child protective services, and any other qualifications identified by the executive director. Direct service provision shall include the care, investigation, assessment, treatment, or case planning for persons in facilities or programs covered by this article or equivalent facilities or programs. Vulnerable persons' central register staff also shall have access to appropriate

law enforcement officers or others with law enforcement experience who shall assist in screening reports that appear to allege criminal offenses and help refer reports, as warranted, to appropriate law enforcement authorities.

(b) The vulnerable persons' central register shall receive reports of allegations of reportable incidents twenty-four hours per day, seven days a week. Mandated reporters shall make such reports in accordance with section four hundred ninety-one of this article; provided, however, any person who has reasonable cause to suspect that a person receiving services has been subjected to a reportable incident may make such a report. In no event shall a report by a mandated reporter to the vulnerable persons' central register eliminate the obligation of a mandated reporter to report incidents in accordance with the applicable laws, regulations and policy of the applicable state oversight agency.

(c) Reports of allegations of reportable incidents shall be submitted, by a statewide, toll-free telephone number (a "hotline") or by electronic transmission, in a manner and on forms prescribed by the executive director. The information required on the reporting form shall include but is not limited to: the name and contact information of the person or persons making the report, if available, and, if the report is made by a custodian, any other staff who have the same information; the name and address of the facility or provider agency; the date, time, specific location and description of the incident; the name and contact information of the subject of the reportable incident, if known; the name of the vulnerable person alleged to have been subjected to a reportable incident; the names of personal representatives for the vulnerable person who is alleged to have been subjected to a reportable incident, if known; and any other information or documentation that the executive director believes may be helpful. The inability of a person making a report to identify a subject shall, in no circumstance, constitute cause to reject such allegation for investigation or to fail to refer such allegation for corrective action. The hotline shall accept anonymous calls.

3. (a) When any allegation that could reasonably constitute a reportable incident is received by the register, the register shall accept and immediately transmit notice of the report orally or

electronically to the appropriate state oversight agency and, as appropriate, to the director or operator of that facility or provider agency.

(b) Whenever a telephone call or electronic transmission to the vulnerable persons' central register alleges an act or circumstances that may constitute a criminal offense or an immediate threat to a vulnerable person's health, safety or welfare, the register shall convey, by the most expedient means available, the information contained in such call or transmission to the appropriate law enforcement agency or district attorney and, to the extent necessary, the appropriate emergency responder, and the state oversight agency.

(c) The justice center is responsible for commencing an investigation of all allegations of reportable incidents that are accepted by the vulnerable persons' central register. With respect to such an investigation, the justice center shall:

(i) upon acceptance of a report of a reportable incident by the vulnerable persons' central register, promptly commence an appropriate investigation;

(ii) take all appropriate measures to protect the life and health of the person who is the alleged victim of a reportable incident, which may include working with the state oversight agency to take immediate steps to remove the vulnerable person from his or her current facility or program or to remove or suspend a subject from a facility or program, subject to any applicable collective bargaining agreement, if the justice center has reasonable cause to believe that the circumstances or condition of the vulnerable person are such that continuing the vulnerable person in his or her place of residence or program, or that continuing such subject in his or her current facility or program, presents an imminent danger to the vulnerable person's life or health;

(iii) determine whether the subject of the report is currently the subject of an open or substantiated report in the vulnerable persons' central register;

(iv) contact the statewide central register of child abuse and maltreatment to determine whether the subject of the report has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment;

(v) if it is discovered that the subject of a report has one or more substantiated reports of abuse or neglect or indicated reports of child abuse or maltreatment in the statewide central register of child abuse and maltreatment and an investigation was or investigations were conducted by a different state agency, or a local child protective service, contact all known agencies or services who investigated such previous report or reports to obtain information on such reports in accordance with section four hundred ninety-six of this article;

(vi) notify the personal representative of the person alleged to have been abused or neglected and, except in the case of a criminal investigation, or if the executive director or his or her designee determines that doing so would interfere with any ongoing investigation, notify the subject or subjects of the report and any other persons named in the report in writing of the existence of the report; provided, however, that such notification may be limited in accordance with subdivision (c) of section 33.16 of the mental hygiene law;

(vii) if a report of a reportable incident to the vulnerable persons' central register involves the death of a person, the justice center shall give telephone notice and immediately send a copy of the report to the appropriate district attorney and to the medical examiner or coroner. The medical examiner or coroner shall conduct a prompt investigation and shall forward a preliminary written report of his or her findings within sixty days of the date of death, absent extraordinary circumstances, and his or her final written report promptly, absent extraordinary circumstances, to the appropriate district attorney, the appropriate law enforcement official, the state agency responsible for overseeing the investigation, the justice center medical review board and, if the death occurred in a hospital, the hospital;

(viii) submit reportable incident findings to the vulnerable persons' central register in accordance with section four hundred ninety-three of this article;

(ix) notify the applicable state oversight agency and the director or operator, where appropriate, to develop a plan of prevention or remediation that the facility or program must implement in response to the report's findings which must be approved and its implementation monitored by the justice center or the state oversight agency, as

appropriate; and

(x) refer suspected cases of falsely reporting abuse or neglect in violation of subdivision four of section 240.50 of the penal law to the appropriate law enforcement agency or district attorney for investigation and prosecution.

(d) Whenever a telephone call or electronic transmission to the vulnerable persons' central register cannot be accepted as a report, but the information provided alleges other potential wrongdoing at a facility or provider agency, the register shall forward the report to the applicable state oversight agency for investigation and protective actions, as needed, pursuant to section four hundred ninety-one of this article.

4. The justice center shall maintain and keep up-to-date records of all incidents reported, together with any additional information obtained during an investigation of such a report and a record of the final disposition of the report.

5. The vulnerable persons' central register shall maintain an electronic database of all accepted reports of reportable incidents. State oversight agencies shall have access to information in the database, limited to cases involving facilities or provider agencies under their jurisdiction.

(a) A unique identifier shall be assigned to each report by the vulnerable persons' central register.

(b) The register shall include the following information for each report: a record of the final disposition of the report; the names and identifying data; dates and circumstances of any person requesting or receiving information from the register; whether the person making the report authorized the disclosure of his or her name and personally identifiable information; and any other information that the executive director, in consultation with the commissioners of the state oversight agencies covered by this article, identifies as furthering the purposes of this article and complying with state and federal regulations regarding the security and confidentiality of individually identifying health information.

6. The justice center shall review such electronic database to identify incident patterns and trends, and implement preventive and corrective actions, and to identify patterns and trends in the reporting and response to allegations of reportable incidents and develop plans of improvement based on such reviews.

7. (a) General information about the existence and purposes of the vulnerable persons' central register and how to make a report to the register shall be made available on the website of the justice center, with links to such information provided on the websites of each of the state oversight agencies covered by this article.

(b) The justice center, in collaboration with the state oversight agencies covered by this article, shall develop and widely distribute written information explaining the reporting requirements and processes consistent with this article. In addition, upon a vulnerable person's commencement of the receipt of services by a facility or a provider agency, personal representatives shall be provided with such information, and such information shall be made available upon request to any person.

(c) The justice center, in collaboration with the state agencies operating, licensing or certifying facilities or the provider agencies covered by this article, shall provide mandated reporters with written information explaining the reporting requirements in accordance with this article.

(d) The justice center shall develop and implement programs to publicly recognize and value the contributions of reporters of allegations of reportable incidents whose actions prompt corrections and improvements in the service system; provided, however, that the name and other personally identifiable information of such reporter shall not be shared unless such person authorizes disclosure.

8. In a case where a subject of a report of alleged abuse or neglect resigns from his or her position or is terminated while under investigation, the state operating agency or the applicable facility or provider agency shall promptly report such resignation or termination to the justice center. The investigation of the report shall continue despite the resignation or termination of such subject.

§ 493. Abuse and neglect findings; consequences. 1. Within sixty days of the vulnerable persons' central register accepting a report of an allegation of abuse or neglect, the justice center shall cause the findings of the investigation to be entered into the vulnerable persons' central register. The justice center may take additional time to enter such findings into the vulnerable persons' central register; provided, however, that the reasons for any delay must be documented and such findings submitted as soon thereafter as practicably possible.

2. For substantiated reports of abuse or neglect in facilities or provider agencies in receipt of medical assistance, such information shall also be forwarded by the justice center to the office of the Medicaid inspector general when such abuse or neglect may be relevant to an investigation of unacceptable practices as such practices are defined in regulations of the office of the Medicaid inspector general.

3. (a) A finding shall be based on a preponderance of the evidence and shall indicate whether: (i) the alleged abuse or neglect is substantiated because it is determined that the incident occurred and the subject of the report was responsible or, if no subject can be identified and an incident occurred, that, the facility or provider agency was responsible; or (ii) the alleged abuse or neglect is unsubstantiated because it is determined not to have occurred or the subject of the report was not responsible, or because it cannot be determined that the incident occurred or that the subject of the report was responsible. A report shall not be determined to be substantiated or unsubstantiated solely because the subject of a report resigns during an investigation.

(b) In conjunction with the possible findings identified in paragraph (a) of this subdivision, a concurrent finding may be made that a systemic problem caused or contributed to the occurrence of the incident.

(c) The justice center shall notify the subject of the report, the facility or provider agency where the abuse or neglect was alleged to have occurred, the applicable state oversight agency and other persons

named in the report, which includes the service recipient's parent, guardian or other person legally responsible for such person, of the findings of the investigation and, as applicable, the local social services commissioner or school district that placed the individual in the facility or provider agency, the office of children and family services and any attorney for the individual whose appointment has been continued by a family court judge during the term of an individual's placement, in accordance with applicable state and federal laws and regulations governing the use and disclosure of records. If the report is substantiated, the justice center shall also notify the subject of the report of his or her rights to request that the report be amended and the procedure by which he or she may seek to amend the report in accordance with section four hundred ninety-four of this article.

(d) A report that is found to be unsubstantiated shall be sealed immediately.

4. Substantiated reports of abuse or neglect shall be categorized into one or more of the following four categories, as applicable:

(a) Category one conduct is serious physical abuse, sexual abuse or other serious conduct by custodians, which includes and shall be limited to:

(i) intentionally or recklessly causing physical injury as defined in subdivision nine of section 10.00 of the penal law, or death, serious disfigurement, serious impairment of health or loss or impairment of the function of any bodily organ or part, or consciously disregarding a substantial and unjustifiable risk that such physical injury, death, impairment or loss will occur;

(ii) a knowing, reckless or criminally negligent failure to perform a duty that: results in physical injury that creates a substantial risk of death; causes death or serious disfigurement, serious impairment of health or loss or impairment of the function of any bodily organ or part, a substantial and protracted diminution of a service recipient's psychological or intellectual functioning, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor; or is likely to result in either;

(iii) threats, taunts or ridicule that is likely to result in a

substantial and protracted diminution of a service recipient's psychological or intellectual functioning, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor;

(iv) engaging in or encouraging others to engage in cruel or degrading treatment, which may include a pattern of cruel and degrading physical contact, of a service recipient, that results in a substantial and protracted diminution of a service recipient's psychological or intellectual functioning, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor;

(v) engaging in or encouraging others to engage in any conduct in violation of article one hundred thirty of the penal law with a service recipient;

(vi) any conduct that is inconsistent with a service recipient's individual treatment plan or applicable federal or state laws, regulations or policies, that encourages, facilitates or permits another to engage in any conduct in violation of article one hundred thirty of the penal law, with a service recipient;

(vii) any conduct encouraging or permitting another to promote a sexual performance, as defined in subdivision one of section 263.00 of the penal law, by a service recipient, or permitting or using a service recipient in any prostitution-related offense;

(viii) using or distributing a schedule I controlled substance, as defined by article thirty-three of the public health law, at the work place or while on duty;

(ix) unlawfully administering a controlled substance, as defined by article thirty-three of the public health law to a service recipient;

(x) intentionally falsifying records related to the safety, treatment or supervision of a service recipient, including but not limited to medical records, fire safety inspections and drills and supervision checks when the false statement contained therein is made with the intent to mislead a person investigating a reportable incident and it is reasonably foreseeable that such false statement may endanger the health, safety or welfare of a service recipient;

(xi) knowingly and willfully failing to report, as required by

paragraph (a) of subdivision one of section four hundred ninety-one of this article, any of the conduct in subparagraphs (i) through (ix) of this paragraph upon discovery;

(xii) for supervisors, failing to act upon a report of conduct in subparagraphs (i) through (x) of this paragraph as directed by regulation, procedure or policy;

(xiii) intentionally making a materially false statement during an investigation into a report of conduct described in subparagraphs (i) through (x) of this paragraph with the intent to obstruct such investigation; and

(xiv) intimidating a mandated reporter with the intention of preventing him or her from reporting conduct described in subparagraphs (i) through (x) of this paragraph or retaliating against any custodian making such a report in good faith.

(b) Category two is substantiated conduct by custodians that is not otherwise described in category one, but conduct in which the custodian seriously endangers the health, safety or welfare of a service recipient by committing an act of abuse or neglect. Category two conduct under this paragraph shall be elevated to category one conduct when such conduct occurs within three years of a previous finding that such custodian engaged in category two conduct. Reports that result in a category two finding not elevated to a category one finding shall be sealed after five years.

(c) Category three is abuse or neglect by custodians that is not otherwise described in categories one and two. Reports that result in a category three finding shall be sealed after five years.

(d) Category four shall be conditions at a facility or provider agency that expose service recipients to harm or risk of harm where staff culpability is mitigated by systemic problems such as inadequate management, staffing, training or supervision. Category four also shall include instances in which it has been substantiated that a service recipient has been abused or neglected, but the perpetrator of such abuse or neglect cannot be identified.

5. (a) Category one findings shall result in permanent placement of the subject of the report on the vulnerable persons' central register in accordance with section four hundred ninety-five of this article.

(b) Except when a custodian has a category two finding elevated to a category one finding pursuant to this section, a custodian with a category two finding shall be subject to progressive discipline. (For state entities bound by collective bargaining, such discipline established by collective bargaining shall govern.) In conjunction with such disciplinary action, the facility or provider agency shall develop a plan for training and any other actions to reduce the risk of recurrence of such conduct. Such plan must be approved by and its implementation monitored by the justice center or the state oversight agency, as appropriate.

(c) With respect to a category three or four finding, the justice center shall require the facility or provider agency to develop and implement a plan of prevention and remediation of the deficient conditions. Such plan shall identify any systemic problem that led to the determination of a category three or four finding and include suggested corrective measures. Such plan must be approved by and its implementation monitored by the justice center or the state oversight agency, as appropriate. In reviewing the continued qualifications of a facility or provider agency for an operating certificate, the state oversight agency shall evaluate such facility or provider agency's compliance with any plans of prevention and remediation resulting from category three or four reports and take appropriate enforcement action, which may include, but not be limited to, closing intake to the facility or provider agency or terminating operating certificates for prolonged or repeated failure to correct identified problems in accordance with applicable state law or regulation.

§ 494. Amendments to and appeals of substantiated reports of abuse or neglect. 1. (a) At any time subsequent to the completion of an investigation of an allegation of abuse or neglect, but in no event later than thirty days after the subject of the report is notified that the report is substantiated, the subject may request that the vulnerable persons' central register amend the findings of the report. If the register does not amend the findings of the report in accordance with such request, the subject shall have the right to be heard before an administrative law judge, to determine whether the findings of the

report should be amended on the grounds that they are inaccurate or inconsistent with the provisions in this article. The office shall establish an appeals process by which the subject of the report is notified of the right to appeal and the procedure by which he or she may challenge the determination that a report is substantiated, with a de novo standard of review.

(b) If the administrative law judge determines that the justice center failed to prove by a preponderance of the evidence the finding that the subject committed the act or acts of abuse or neglect, the justice center shall amend the record to reflect that such a finding was made, and shall promptly notify the subject of the report and any other persons or entities previously notified of the existence of the report of the amended finding. Such report shall be sealed in accordance with the standards set forth in section four hundred ninety-six of this article.

2. The justice center is authorized to make any appropriate order respecting the amendment of such findings of a report to make it accurate or consistent with the requirements of this article.

§ 495. Register of substantiated category one cases of abuse or neglect. 1. The justice center shall develop and maintain a register of subjects of reports who have been found to have a substantiated category one case of abuse or neglect, in accordance with paragraph (a) of subdivision four of section four hundred ninety-three of this article, and who have: (a) not requested an amendment of the findings of the report in the time specified in subdivision one of section four hundred ninety-four of this article; or (b) been heard pursuant to such subdivision and all the findings of the report were not amended to be unsubstantiated.

2. All facility and provider agencies, other providers of services to vulnerable persons in programs licensed, certified or funded by any state oversight agency and other provider and licensing agencies as defined in subdivision three or four of section four hundred twenty-four-a of this chapter shall check the register of substantiated

category one cases of abuse or neglect before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with a service recipient or before approving an applicant for a license, certificate, permit or other approval to provide care to a service recipient. (For state entities bound by collective bargaining, such action established by collective bargaining shall govern.)

3. If a person is listed on the register of substantiated category one cases of abuse or neglect, a facility or provider agency and all other providers of services to vulnerable persons in programs licensed or certified by any state oversight agency shall not hire such a person to have regular and substantial contact with a service recipient in any such facility or program. Other providers or licensing agencies as defined in subdivision three or four of section four hundred twenty-four-a of this chapter shall determine whether to hire or allow such a person to have regular or substantial contact with a service recipient in accordance with the provisions of subdivision five of section four hundred twenty-four-a of this chapter.

4. A custodian shall be subject to immediate termination if he or she is convicted of any crime as defined in subdivision six of section 10.00 of the penal law that relates directly to the abuse or neglect of a vulnerable person, or is placed on the register of substantiated category one cases of abuse or neglect. (For state entities bound by collective bargaining, such action established by collective bargaining shall govern.)

5. Placement on the register shall be permanent, unless the office is officially notified of the individual's death.

6. Nothing in this article shall diminish the rights or remedies otherwise available under law, regulation or appropriate collective bargaining agreements of any facility or provider agency with respect to the termination or discipline of employees.

§ 496. Confidentiality. 1. Unless an investigation of a report conducted pursuant to this article has been substantiated, all information, including information identifying the subject of the report and other persons named in the report, shall be sealed forthwith by the vulnerable persons' central register, the state oversight agency and the facility or provider agency. Such reports may only be unsealed and made available, consistent with any other applicable state or federal law, to:

(a) the state agency operating, licensing or certifying a facility or program for the purpose of monitoring or licensing such facility or program;

(b) any state agency operating, licensing, or certifying a facility or provider agency when investigating a report of suspected abuse or neglect involving the subject of a previously sealed report accepted by the vulnerable persons' central register;

(c) the subject of the report;

(d) a court of relevant jurisdiction or a law enforcement official when such court or official verifies that the report is necessary to conduct an active investigation or prosecution of a violation of subdivision four of section 240.50 of the penal law;

(e) the justice center medical review board, for the purposes of preparing a fatality report pursuant to section five hundred fifty-six of the executive law;

(f) the independent agency designated pursuant to subdivision (b) of section five hundred fifty-eight of the executive law, provided that such information is relevant to a matter within the legal authority of such agency; or

(g) other persons named in the report, as defined in subdivision thirteen of section four hundred eighty-eight of this article which includes, but is not limited to, the service recipient's parent, guardian or other person legally responsible for such person; provided, however, that the names and other personally identifying information of custodians and other service recipients shall not be included unless such custodians and service recipients authorize disclosure.

Notwithstanding the prohibitions on non-redisclosure set forth in the closing sentence of this subdivision, the service recipient, and such

service recipient's parent, guardian or other person legally responsible for such service recipient may disclose information and reports made available pursuant to this paragraph to an attorney, who shall not further disclose except as is necessary for use by such attorney in rendering advice, assistance and representation.

When a report is unsealed, persons given access to it shall not redisclose such reports except as necessary to conduct such appropriate investigation or prosecution and shall request that the court redact any copies of such reports produced in any court proceeding to remove the names of those persons irrelevant to the proceeding such as the source of the report, the name of the subject, and other persons named in the reports; or that the court issue an order protecting the names of the subjects and other persons named in the reports from public disclosure.

2. Reports made pursuant to this article and found to be substantiated as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the justice center, a state oversight agency, a delegate investigatory entity, facility or provider agency covered by this article shall be confidential and shall not be disclosed to any other party unless authorized pursuant to this section or any other applicable state or federal law. In the event that other applicable state or federal law provisions are more restrictive than the provisions of this section, the provisions of such other state or federal law shall apply. In accordance with this section, such information shall be made available only to:

(a) a person who is the subject of the report;

(b) other persons named in the report, which includes, but is not limited to, the service recipient's parent, guardian or other person legally responsible for such person. Notwithstanding the prohibitions on non-redisclosure set forth in subdivision four of this section, the service recipient, and such service recipient's parent, guardian or other person legally responsible for such service recipient may disclose information and reports made available pursuant to this paragraph to an attorney, who shall not further disclose except as is necessary for use by such attorney in rendering advice, assistance and representation;

(c) the justice center;

(d) the applicable state oversight agency, the director or operator of

the applicable facility or provider agency and, as appropriate, the local social services commissioner, the commissioner of the office of children and family services, or the school district placing the service recipient, or an agency providing adult protective services to the service recipient;

(e) a physician who has before him or her a service recipient whom he or she reasonably suspects may be or may have been abused or neglected;

(f) a court, upon a finding that the information in the record is relevant to the determination of an issue before the court;

(g) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury;

(h) any appropriate state legislative committee responsible for legislation affecting vulnerable persons, provided, however, that no information identifying or tending to identify the subjects of the report or other persons named in the report shall be made available;

(i) any person engaged in a bona fide research purpose; provided, however, that no information identifying or tending to identify the subjects of the report or other persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the justice center, after consultation with the commissioner of the applicable state oversight agency, gives prior approval;

(j) a facility or provider agency, other providers of services to vulnerable persons in programs licensed or certified by any state oversight agency, or any other provider agency as defined in subdivision three of section four hundred twenty-four-a of this chapter or a licensing agency as defined in subdivision four of section four hundred twenty-four-a of this chapter, in accordance with the provisions of subdivision two of section four hundred ninety-five of this article;

(k) a probation service regarding a person about whom it is conducting an investigation pursuant to article three hundred ninety of the criminal procedure law, or a probation service or the department of corrections and community supervision regarding a person to whom the service or department is providing supervision pursuant to article sixty of the penal law or article eight of the correction law, where the service or department requests the information upon a certification that such information is necessary to conduct its investigation, that there

is reasonable cause to believe that the subject of an investigation is the subject of a substantiated report and that there is reasonable cause to believe that such records are necessary to the investigation by the probation service or the department, provided, however, that only substantiated reports shall be furnished pursuant to this subdivision;

(l) a district attorney, an assistant district attorney or investigator employed by the office of a district attorney, a sworn officer of the division of state police, of the regional state park police, of a city police department, or of a county, town or village police department or county sheriff's office or department upon written verification that such information is necessary to conduct a criminal investigation or criminal prosecution of a person, and that there is reasonable cause to believe that such person is the subject of a report; provided, however, that only substantiated reports shall be furnished pursuant to this subdivision;

(m) the New York city department of investigation; provided, however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the department of investigation unless such information is essential to an investigation within the legal authority of the department of investigation and the justice center or the applicable state oversight agency gives prior approval;

(n) a provider or coordinator of services to which a facility or provider agency or social services district has referred a service recipient or a service recipient's family or to whom the service recipient or the recipient's family have referred themselves at the request of such agency or social services district, when said service recipient is reported to the vulnerable persons' central register as the vulnerable person and when the records, reports or other information are necessary to enable the provider or coordinator to establish and implement a plan of service for the service recipient or the service recipient's family, or to monitor the provision and coordination of services and the circumstances of the service recipient and the service recipient's family, or to directly provide services in accordance with requirements established by the applicable state oversight agency to the extent that the sharing of such information is not otherwise prohibited by federal law; provided, however, a provider or coordinator of services

given access to information concerning a service recipient pursuant to this paragraph shall be authorized to redisclose such information to other persons or agencies which also provide services to the service recipient or the service recipient's family only if an agreement has been or will be reached between the provider or coordinator of service and such facility or provider agency, operating state agency or local district. An agreement entered into pursuant to this paragraph shall include the specific agencies and categories of individuals to whom redisclosure by the provider or coordinator of services is authorized. Persons or agencies given access to information pursuant to this paragraph may exchange such information in order to facilitate the provision or coordination of services to the service recipient or the service recipient's family;

(o) a disinterested person making an investigation pursuant to section one hundred sixteen of the domestic relations law, provided that such disinterested person shall only make this information available to the judge before whom the adoption proceeding is pending;

(p) a criminal justice agency conducting an investigation of a missing child or vulnerable adult where there is reason to suspect information in a substantiated report under this article is needed to further such investigation;

(q) the director or operator of the facility or provider agency and, as appropriate, the local social services commissioner, commissioner of the office of children and family services, or school district placing a child in that program, the applicable executive agency, and, for any report involving abuse or neglect of a child, any attorney appointed to represent the child whose appointment has been continued by a family court judge during the term of the placement and subject to the limitations contained in section four hundred ninety-five of this article;

(r) for any report alleging abuse or neglect of a child, a child protective service of another state when such service certifies that the records and reports are necessary in order to conduct a child abuse or maltreatment investigation within its jurisdiction of the subject of the report and shall only be used for purposes of conducting such investigation and will not be redisclosed to any other person or agency;

(s) an attorney for a child, appointed pursuant to section one

thousand sixteen of the family court act, at any time such appointment is in effect, in relation to any report in which the respondent in the proceeding in which the attorney for the child is appointed is the subject or another person named in the report, pursuant to sections one thousand thirty-nine-a and one thousand fifty-two-a of the family court act;

(t) officers and employees of the state comptroller, for purposes of a duly authorized performance audit, provided that such comptroller shall have certified to the keeper of such records that he or she has instituted procedures developed in consultation with the justice center to limit access to service recipient-identifiable information to persons requiring such information for purposes of the audit and that appropriate controls and prohibitions are imposed on the dissemination of service recipient-identifiable information contained in the conduct of the audit.

(i) Information pertaining to the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such vulnerable person or such person's family shall not be made available to such officers and employees unless disclosure of such information is absolutely essential to the specific audit activity and the justice center gives prior written approval.

(ii) Any failure to maintain the confidentiality of service recipient-identifiable information shall subject such comptroller or officer to denial of any further access to records until such time as the audit agency has reviewed its procedures concerning controls and prohibitions imposed on the dissemination of such information and has taken all reasonable and appropriate steps to eliminate such lapses in maintaining confidentiality to the satisfaction of the justice center. Such justice center shall establish the grounds for denial of access to records contained under this section and shall recommend as necessary a plan of remediation to the audit agency. Except as provided in this section, nothing in this subparagraph shall be construed as limiting the powers of such comptroller or officer to access records which he or she is otherwise authorized to audit or obtain under any other applicable provision of law;

(u) an entity with appropriate legal authority in another state to

license, certify or otherwise approve prospective foster and adoptive parents where disclosure of information regarding the prospective foster or adoptive parents and other persons over the age of eighteen residing in the home of such prospective parents is required by paragraph twenty of subdivision (a) of section six hundred seventy-one of title forty-two of the United States Code;

(v) a social services official who is investigating whether an adult is in need of protective services in accordance with the provisions of section four hundred seventy-three of this chapter or a child is in need of child protective services pursuant to the provisions of title six of article six of this chapter, when such official has reasonable cause to believe that such reports and information are needed to further the present investigation;

(w) for reports alleging abuse or neglect of children, members of a citizen review panel as established pursuant to section three hundred seventy-one-b of this chapter; provided, however, such members shall not disclose to any person or governmental official any identifying information which the panel has been provided and shall not make public other information unless otherwise authorized by statute;

(x) officers and employees of the education department and, where applicable, the department of health, for the purpose of investigating charges and maintaining professional discipline proceedings against the professional license of the subject of the report pursuant to Title VIII of the education law, and to employees of the education department for the purpose of investigating charges and maintaining good moral character proceedings against the teaching, school administrator or school leader certificate or license of the subject of the report; and

(y) the independent agency designated pursuant to subdivision (b) of section five hundred fifty-eight of the executive law, provided that such information is relevant to a matter within the legal authority of such agency.

3. (a) The executive director, in consultation with the applicable state oversight agency may disclose information regarding the abuse or neglect of a vulnerable person as set forth in this subdivision, and the investigation thereof and any services related thereto, to persons other than those authorized to receive records under subdivision two of this

section if otherwise permitted by applicable federal law and if he or she determines that such disclosure shall not be contrary to the best interests of the vulnerable person and any one of the following factors are present:

(i) the subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained in the vulnerable persons' central register; or

(ii) the investigation of the abuse or neglect of the vulnerable person or the provision of services by the facility or provider agency has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a district attorney, any other state or local investigative agency or official, or by judge of the unified court system; or

(iii) there has been a prior knowing, voluntary, public disclosure by an individual concerning a report of abuse or neglect in which such individual is named as the subject of the report; or

(iv) the vulnerable person named in the report has died or the report involves the near fatality of a vulnerable person. For the purposes of this section, "near fatality" means an act that results in the vulnerable person being placed, as certified by a physician, in serious or critical condition.

(b) For the purposes of this subdivision, only the following information may be disclosed:

(i) the name of the abused or neglected vulnerable person;

(ii) the determination by the justice center and the findings upon which such determination was based;

(iii) identification of services provided or actions, if any, taken regarding the vulnerable person named in the report and his or her family as a result of any such report or reports;

(iv) whether any report of abuse or neglect regarding such vulnerable person has been "substantiated" as maintained by the vulnerable persons' central register;

(v) any actions taken by the state oversight agency or the facility or provider agency in response to reports of abuse or neglect of the vulnerable person to the vulnerable persons' central register, including but not limited to actions taken after each and every report of abuse or neglect of such person and the dates of such reports; and

(vi) any extraordinary or pertinent information concerning the circumstances of the abuse or neglect of the vulnerable person and the investigation thereof, where the executive director, in consultation with the commissioner of the applicable state oversight agency determines such disclosure is consistent with the public interest.

(c) Information may be disclosed pursuant to this subdivision as follows:

(i) information released prior to the completion of the investigation of a report shall be limited to a statement that a report is "under investigation";

(ii) when there has been a prior disclosure pursuant to paragraph (a) of this subdivision, information released in a case in which the investigation of the report has been completed but not substantiated, information shall be limited to the statement that "the investigation has been completed and the report has been unsubstantiated";

(iii) if the report has been "substantiated" then information may be released pursuant to paragraph (a) of this subdivision.

(d) Any disclosure of information pursuant to this subdivision shall be consistent with the provisions of paragraph (b) of this subdivision. Such disclosure shall not identify or provide an identifying description of the source of the report, and shall not identify the name of the abused or neglected vulnerable person's siblings or children, the parent or other person legally responsible for such person or any other members of such person's household.

(e) In determining, pursuant to paragraph (a) of this subdivision, whether disclosure will be contrary to the best interests of the vulnerable person, the executive director shall consider the interest in privacy of the vulnerable person and such person's siblings or children, the parent or other person legally responsible for such person or any other members of such person's household.

(f) Except as it applies directly to the cause of the abuse or neglect of the vulnerable person, nothing in this subdivision shall be deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to such person or such person's family. Any such information that applies directly to the cause of the abuse or neglect of the vulnerable person may be

disclosed only if disclosure is not otherwise restricted by applicable federal or state laws.

4. A person given access to the names or other information identifying the subject of the report or other persons named in the report shall not divulge or make public such identifying information unless he or she is a district attorney or other law enforcement official and the purpose is to initiate court action or the disclosure is necessary in connection with the investigation or prosecution of the subject of the report for a crime alleged to have been committed by the subject against another person named in the report. Nothing in this section shall be construed to permit any release, disclosure or identification of the names or identifying descriptions of persons who have reported suspected abuse or neglect to the vulnerable persons' central register or the state oversight agency, facility or provider agency or other entity where such persons are employed or with which they are associated without such persons' written permission except to persons, officials, and agencies enumerated in paragraphs (f), (g), (l), (m) and (v) of subdivision two of this section. To the extent that persons or agencies are given access to information pursuant to paragraphs (c), (d), (e), (k), (l), (m), (n) and (p) of subdivision two of this section, such persons or agencies may give and receive such information to each other in order to facilitate an investigation conducted, or the provision of services, by such persons or agencies.

5. Notwithstanding any contrary provision of this section, mental hygiene legal service shall have access to all information, books, records and data as provided for in subdivision (d) of section 47.03 of the mental hygiene law.

§ 497. Immunity from liability. Any person participating reasonably and in good faith in making a report, taking photographs, conducting or overseeing an investigation, operating the vulnerable persons' central register or disclosing information in compliance with this article shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any

proceeding, civil or criminal, the good faith of any such person required to perform any of such functions in accordance with this article shall be presumed, provided such person, was acting in discharge of his or her duties and within the scope of his or her employment or responsibilities, and that such liability did not result from the willful misconduct or gross negligence of such person.

ARTICLE 12

CONSTRUCTION; LAWS REPEALED; WHEN TO TAKE EFFECT

Section 550. Constitutionality.

551. Construction.

552. Laws repealed.

§ 550. Constitutionality. If any provisions of this chapter shall be held to be unconstitutional, such decision shall not affect the validity of the remaining provisions of this chapter.

§ 551. Construction. 1. The provisions of this chapter so far as they are substantially the same as those existing at the time they shall take effect, shall be construed as a continuation of such laws, modified or amended, according to the language employed in this chapter, and not as new enactments. References in laws not repealed to provisions of law repealed, or transferred and enacted into and made a part of this chapter, shall be construed as applying to the provisions so incorporated.

2. All references in this chapter to articles, titles or sections shall, unless otherwise indicated in connection therewith, be deemed to refer to the articles, titles or sections of this chapter; and, if so stated in connection therewith, to a subdivision of a section of this chapter. All references in any section of this chapter to a numbered subdivision, or clause shall, unless otherwise indicated in connection therewith, be deemed to refer to the subdivision, or clause so numbered or lettered in such section. All references in any article to a title

shall, unless otherwise indicated in connection therewith, be deemed to refer to the title so numbered in such article.

§ 552. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.