

SUMMARY OF EXPRESS TERMS

These regulations add a new Article 8 to State Hospital Code for implementing the requirements of Article 29-I of the Public Health Law regarding the licensure of voluntary foster care agency (VFCA) health facilities by the Department of Health (Department), by January 1, 2019. Authorized agencies that are approved by the Office of Children and Family Services (Office) to care for or board out children may become licensed to provide limited health-related services, as defined in these regulations.

Section 769.1 defines terms used in Article 8, including “behavioral health services,” “limited health-related services,” “residential program,” “VFCA,” and “VFCA Health Facility.”

Section 769.2 establishes the process for obtaining a license to operate a VFCA Health Facility. Effective January 1, 2019, a VFCA may provide limited health-related services only if it is licensed under Article 8. A VFCA that operates a residential program may file an application for licensure describing the limited health-related services it intends to provide, a description of the physical plant where it will provide the services, and how it will staff the facility, including a medical director. VFCA Health Facilities will be licensed to provide core limited health-related services to children and youth in their care. VFCAs may also apply to become licensed to provide other limited health-related services to children and youth in the custody of the local department of social services (LDSS), and for up to one year after discharge from the custody of the LDSS.

Section 769.3 requires applicants to maintain an appropriate physical plant environment and equipment in order to provide the limited health-related services it will be providing. Section 769.4 establishes the process for revocation, suspension, limitation or annulment of a license by the Department.

Section 770.1 requires VFCA Health Facilities to provide core limited health-related services. The core services are: (1) behavioral health services, such as improving developmentally appropriate behavior to enable children and youth to function successfully in the home, school, and community; (2) nursing services, such as medication management and administration; (3) clinical consultation for, and supervision of, staff providing behavioral health and nursing services; (4) coordination of the services children and youth are receiving under an individualized treatment plan, including escorting them to where the services are being provided and ensuring that relevant information is shared among service providers; and (5) program administration and liaison with health plans to assist children and youth in appropriately utilizing benefits for which they are eligible. VFCA Health Facilities will be required to maintain records of services provided to children and youth under individualized treatment plans and to provide access to the records to those who have a right to access the records.

Section 770.2 allows VFCA Health Facilities to provide other limited health-related services authorized under the Medicaid program State Plan, such as immunizations, screening, diagnosis and treatment for episodic minor ailments, illnesses or injuries, and ongoing treatment of chronic illnesses. Other limited health-related services may also include therapy for the diagnosis and treatment of behavioral and developmental needs and clinical laboratory testing. Other limited health-related services shall not include:

surgical services; dental services; orthodontic care, and emergency intervention for major trauma and treatment of life-threatening or potentially disabling conditions.

Section 770.3 specifically prohibits duplication of billing for services. Section 770.4 requires VFCA Health Facilities to have policies and procedures for 24 hours a day, 7 days a week on-call coverage to refer children and youth as needed for urgent and emergency care; and to make referrals, establish continuity of care, and make arrangements with hospitals for health and behavioral health care services, for children and youth whose needs exceed services that can be provided by the VFCA Health Facility.

Section 770.5 requires VFCA Health Facilities to arrange for limited health-related services consistent with 18 NYCRR §441.22, in accordance with an individualized treatment plan. The individualized treatment plan must be recommended by and under the supervision and oversight of a physician, nurse practitioner, registered professional nurse, clinical nurse specialist, psychiatrist, psychologist, master social worker, clinical social worker, mental health counselor, marriage and family therapist, or psychoanalyst, as applicable, who meet state licensing requirements in accordance with applicable state law. The individualized treatment plans shall be re-evaluated annually, or as needed, to determine whether services have contributed to meeting goals.

Section 770.6 establishes the process for quality improvement activities. Section 770.7 requires VFCA Health Facilities to have policies and procedures for proper handling of medication and medical supplies. Section 770.8 requires VFCA Health Facilities to have

systems, policies and administrative procedures in place that support the billing requirements for the operation of the VFCA Health Facility.

Pursuant to the authority vested in the Commissioner of Health by section 2999-gg of the Public Health Law, Subchapter C of Chapter V of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new Article 8, to be effective upon publication of a Notice of Adoption in the New York State Register or January 1, 2019, whichever is later, to read as follows:

A new Article 8 is added to read as follows:

Article 8 – Voluntary Foster Care Agency Health Facilities

Part 769 – Voluntary Foster Care Agency Health Facility Licensure

§ 769.1. Definitions. The following words or phrases, as used in this article, shall have the following meanings, unless the context otherwise requires:

- (a) “Behavioral health services” means services within the scope of practice of a physician, psychiatrist, psychologist, master social worker, clinical social worker, mental health counselor, marriage and family therapist, or a psychoanalyst.
- (b) “Department” means the New York State Department of Health.
- (c) “Limited Health-Related Services” means “core limited health-related services” as set forth in section 770.1 of this article and “other limited health-related services” as set forth in section 770.2 of this article.
- (d) “Office” means the New York State Office of Children and Family Services.
- (e) “Residential Program” means a duly licensed, certified or approved foster family boarding home, agency boarding home, supervised independent living program, group home, group residence, institution, or any combination thereof as such terms are defined under 18 NYCRR section 441.2, which provides care for a child away from his or her home 24 hours a day.

- (f) “Voluntary Foster Care Agency (VFCA)” means an “authorized agency,” as defined under section 371(10)(a) of the Social Services Law, which has the written approval of the Office and corporate or statutory authority to care for or to board out children in New York State in accordance with section 460-a of the Social Services Law.
- (g) “VFCA Health Facility” means the program of a VFCA that is licensed to provide limited health-related services under this article.

§ 769.2. Licensure of VFCA Health Facilities; Operating Certificates.

- (a) A VFCA may provide limited health-related services only if it is licensed as a VFCA Health Facility by the Department in accordance with this article.
- (b) To become licensed as a VFCA Health Facility, the VFCA shall file an application for licensure with the Department and the Office in such manner and on such forms as prescribed by, or acceptable to, the Department and the Office. The application shall:
 - (1) Contain the name of the VFCA, the kind or kinds of limited health-related services to be provided, the location and physical description of the physical plant, and such other information as the Department and the Office may require.
 - (2) Demonstrate to the Department’s satisfaction that the applicant meets the following requirements:
 - (i) The applicant operates a residential program as defined in section 769.1 of this article.
 - (ii) The applicant does not:

- (a) appear on the NYS Office of the Medicaid Inspector General Medicaid Fraud exclusion list;
 - (b) appear on the Office fiscal sanction list;
 - (c) have a record of poor performance on the audit and quality control list of audited contracts and list for A-133 single audit reports;
 - (d) appear on the Internal Revenue Service charities revocation list; or
 - (e) appear on any other applicable New York State exclusion lists, unless the applicant can provide proof that it is implementing a corrective action plan.
- (iii) The applicant shall describe how it will provide the core limited health-related services as set forth in section 770.1 of this article, and, if it seeks to be licensed to provide other limited health-related services, how it will provide other limited health-related services as set forth in section 770.2.
- (iv) The applicant shall demonstrate that it has arranged for adequate staffing to provide the limited health-related services that it is applying to be licensed to provide.
- (v) The applicant shall demonstrate that it will have an adequate physical plant environment and equipment as described in section 769.3 of this article.
- (vi) The applicant shall document that it has a medical director responsible for establishing adequate and appropriate policies and procedures for the provision of health services at the VFCA Health

Facility for which the applicant is seeking approval, including clinical supervision by the medical director and/or one or more other health care practitioners as required by section 770.1(a)(3) of this Part.

- (c) The VFCA Health Facility shall be licensed to provide limited health-related services only to the following persons:
 - (1) Children and youth in the custody of the local department of social services (LDSS) and in the care of a VFCA in accordance with sections 770.1 and 770.2 of this article.
 - (2) Children and youth in the custody of the LDSS but not in the care of a VFCA, in accordance with section 770.2 of this article.
 - (3) Children and youth who were in the custody of the LDSS for up to one year after discharge from the custody of the LDSS, in accordance with section 770.2 of this article.

§ 769.3. Physical Plant Environment and Equipment. A VFCA Health Facility shall maintain a physical plant environment and equipment to provide limited health-related services in accordance with guidance posted on the Department and Office websites. Upon request, the VFCA shall provide the Department with any information relating to its physical plant environment and equipment necessary to evaluate its application to provide limited health-related services.

§ 769.4. Revocation, suspension, limitation or annulment of a license.

- (a) A license to provide limited health-related services under this article may be revoked, suspended, limited, annulled or denied by the Department, in consultation with the Office, if a VFCA Health Facility is determined to have failed to comply

with the provisions of this article or any other laws, rules or regulations applicable to such health-related services. No such action against a licensee shall affect the VFCA Health Facility's license to care for or to board out children unless the Office determines, pursuant to its regulations, that the existing circumstances make it necessary to limit, suspend or revoke the authority of the authorized agency to care for and/or to board out children.

- (b) No license issued under this article may be revoked, suspended, limited, annulled or denied without a hearing, provided that a license may be suspended or limited without a hearing for a period of not more than thirty days upon written notice of a determination by the Department that the continuation of limited health-related services places the public health or safety of an individual in imminent danger.

Part 770 – Voluntary Foster Care Agency Health Facility Services

§ 770.1. Core Limited Health-Related Services.

- (a) VFCA Health Facilities shall provide the following core limited health-related services through sufficient numbers of qualified staff, either by employment or through contract, to maintain the physical, mental and psychosocial well-being of each child/youth as determined by resident assessments and individualized treatment plans, in accordance with guidance posted on the Department and Office websites, and consistent with relevant scope of practice laws:
 - (1) Behavioral health services, such as improving developmentally appropriate pro-social behavior and enhancing compliance with behavioral expectations, and skill building activities to prevent disease or disability

and promote physical, developmental, and mental health, and to enable the child/youth to function successfully in the home, school and community.

- (2) Nursing services, including medication management and administration, by a licensed nurse acting within the scope of his or her practice.
- (3) Clinical consultation and supervision
 - (i) of behavioral health services by a licensed psychiatrist, physician, psychologist, master social worker, clinical social worker, mental health counselor, marriage and family therapist, or psychoanalyst who provides behavioral health supervision and programmatic direction within the scope of his or her practice; and
 - (ii) of nursing services by a physician, nurse practitioner, or registered professional nurse who provides clinical supervision and programmatic direction within the scope of his or her practice.
- (4) Coordination of the receipt of health services consistent with 18 NYCRR section 441.22, in accordance with an individualized treatment plan pursuant to this section, including escorting children/youth to health care appointments and supervising them during health care appointments, ensuring the exchange of health information for treatment purposes, and discharge planning and documentation.
- (5) Program administration and liaison with managed care organizations to implement policies and procedures related to the management of the VFCA Health Facility, coordinating care among health care providers, social service providers, and school and community-based services, assisting in enrollment of the child/youth in eligible public or private insurance, and utilization of available health plan benefits.

- (b) VFCA Health Facilities shall provide or make available services that are documented in an individualized treatment plan, in accordance with guidance posted on the Department and Office websites, and as provided in section 770.4 of this article.
- (c) VFCA Health Facilities shall comply with all applicable State and federal laws, rules, and regulations regarding maintenance of medical records and providing access to such records to patients or their authorized representatives.

§ 770.2. Other Limited Health-Related Services.

- (a) In addition to core limited health-related services that shall be provided, VFCA Health Facilities may provide other limited health-related services, including services consistent with the individualized treatment plan, provided that such services are consistent with the requirements of this section and relevant scope of practices laws. Such other limited health-related services are limited to Home and Community Based Services (HCBS), as authorized under a Medicaid State Plan waiver, and other Medicaid State Plan services as described in this section, provided that other limited health-related services shall not include: surgical services; dental services; orthodontic care; and emergency intervention for major trauma and treatment of life-threatening or potentially disabling conditions.
- (b) To provide other limited health-related services, a VFCA Health Facility shall:
 - (1) describe, in the application for licensure pursuant to section 769.2, the other limited health-related services that it intends to provide;
 - (2) possess all certifications, designations or licenses as required by law; and
 - (3) comply with all applicable laws, regulations and standards for providing such other limited health-related services.

- (c) Other Medicaid State Plan services may include, but are not limited to, the following:
- (1) Screening, diagnosis and treatment services related to physical health, including:
 - (i) immunizations in accordance with the most current Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18 Years, issued by the Advisory Committee on Immunization Practices, as appropriate;
 - (ii) on-going treatment of chronic conditions as specified in an individualized treatment plan; and
 - (iii) diagnosis and treatment related to episodic care related to minor ailments, illnesses or injuries, including pediatric sick visits.
 - (2) Therapy for the diagnosis and treatment of behavioral and developmental needs.
 - (3) Clinical laboratory testing in compliance with all applicable laws for such testing.

§ 770.3. There shall be no duplication of billing for services between the core limited health-related services set forth in section 770.1 of this article and other limited health-related services set forth in section 770.2 of this article.

§ 770.4. Health and Safety, including Referrals and Urgent and Emergency Care. A VFCA Health Facility shall have policies and procedures for the management and care of medical conditions that require health services beyond the limited health-

related services set forth in sections 770.1 and 770.2 of this article, or are of an urgent or emergency health care need. Such policies and procedures shall include but shall not be limited to:

- (a) 24 hours a day, 7 days a week on-call coverage to refer a child/youth whose needs exceed services provided by the VFCA Health Facility, to establish continuity of care; and
- (b) arrangements with hospitals for health and behavioral health care services for a child/youth whose needs exceed services provided by the VFCA Health Facility.

§ 770.5. Assessments and Treatment Planning.

- (a) A VFCA Health Facility shall arrange for limited health-related services for every child/youth in its care, consistent with 18 NYCRR section 441.22, in accordance with an individualized treatment plan pursuant to this section.
- (b) Each VFCA Health Facility is responsible for developing and implementing an individualized treatment plan for each child/youth, including but not limited to the following:
 - (1) Identification of the child/youth's needs in accordance with assessments under 18 NYCRR section 441.22.
 - (2) Recommended treatment, referral information, and follow-up appointments.
 - (3) Information for caregivers about healthy growth and development.
 - (4) Overall health assessments in the child/youth's case planning to enhance service coordination and monitoring.
 - (5) If a child/youth has a chronic illness or condition requiring long-term medical, behavioral and developmental health, dental, or other services,

the individualized treatment plan shall detail: proposed treatment, alternative treatments, and risks/benefits.

- (6) Emergency protocols.
- (c) The services to each child/youth shall be part of an individualized treatment plan recommended by and under the supervision and oversight of a physician, nurse practitioner, registered professional nurse, clinical nurse specialist, psychiatrist, psychologist, master social worker, clinical social worker, mental health counselor, marriage and family therapist, or psychoanalyst, as applicable, who meet state licensing requirements in accordance with applicable state law.
- (d) The child/youth, his or her family and the service providers shall be encouraged to participate in the development of the individualized treatment plan.
- (e) Individualized treatment plans shall be re-evaluated annually, or as needed, to determine whether services have contributed to meeting goals.

§ 770.6. Quality improvement activities.

- (a) A VFCA Health Facility shall adopt quality improvement policies and procedures. On at least a biannual basis, the VFCA Health Facility shall analyze VFCA data, measure performance, and identify trends and opportunities for improvement. The VFCA Health Facility shall implement strategies to address areas of concern and areas that need improvement and periodically re-evaluate such strategies to assess effectiveness.
- (b) The VFCA Health Facility shall adopt staffing protocols regarding the following:
 - (1) Provider credentials and maintenance.
 - (2) Professional continuing education.

- (3) Pre-employment procedures to verify education and experience, and applicable background check.
 - (4) Staff and program evaluation.
- (c) The VFCA shall conduct continuous quality improvement activities that include the following:
- (1) Measures of child/youth safety.
 - (2) Medical record review.
 - (3) Complaint and incident review.
 - (4) Corrective actions pursuant to plans with specified time frames.
 - (5) Appropriate security, inventory controls and accountability for medications and related supplies.

§ 770.7. Medication and Medical Supplies

- (a) A VFCA Health Facility shall have policies and procedures applicable to medications and medical supplies that include, but are not limited to:
- (1) Medications and supplies shall be secured, controlled and have measures in place to establish accountability of transactions. This includes the following documentation of all VFCA Health Facility-supplied medication and related supply transactions:
 - (i) Physical inventories of medications and sensitive medical supplies kept on site.
 - (ii) Reconciliation of inventory discrepancies as needed.
 - (iii) Disposition of expired medications.

- (2) Compliance with Article 33 of Public Health Law standards for prescribing, dispensing, administering, storing and inventorying of controlled substances.
- (3) Maintenance and implementation of guidelines for administering medications, including guidelines addressing all potential side effects and medication.

§ 770.8. Billing Procedures. A VFCA Health Facility shall have systems, policies and administrative procedures in place that support the billing requirements for the operation of the VFCA Health Facility.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2999-gg of the Public Health Law authorizes the Commissioner of the Department of Health to adopt rules and regulations governing licenses for voluntary foster care agency health facilities to provide limited health related services to children in foster care. The statute allows the Commissioner to define the limited health-related services that may be provided, establish rules and criteria for the issuance of licenses and regulate the manner such limited health-related services shall be provided.

L. 2002, Ch. 420, § 9, as amended, creates a licensure exemption for social work (Education Law Article 154). L. 2002, Ch. 676, §17-a, as amended, creates a licensure exemption for psychology (Education Law Article 153) and for mental health practitioners (Education Law Article 163, which includes mental health counseling, marriage and family therapy, and psychoanalysis). These chapter laws were amended most recently by L. 2018, Ch. 57, Pt. Y.

Legislative Objectives:

Part N of Chapter 56 of the Laws of 2017 added a new Article 29-I to the Public Health Law (Medical Services for Foster Children). Section 2999-gg of Article 29-I of the Public Health Law, establishes voluntary foster care agency health facilities. Voluntary foster care agencies established under section 460-b of the Social Services Law are regulated by the New York State Office of Children and Family Services (OCFS). Public Health Law section 2999-gg authorizes voluntary foster care agencies to be licensed by the Commissioner, as a new type of health care facility, to provide limited

health-related services to children in foster care. Foster care children are categorically eligible for Medicaid.

The establishment of a license for voluntary foster care agency health facilities is intended to facilitate the transition of children in voluntary foster care agency facilities to managed care by allowing managed care plans to contract with volunteer foster care agencies to provide health services. Licensing the voluntary foster care agencies addresses corporate practice of medicine rules that require managed care plans to contract with licensed providers for the provision of health services. Public Health Law Article 29-I also gives the Department the authority to regulate these facilities.

Needs and Benefits:

The transition of children in foster care placed with Voluntary Foster Care Agencies (VFCAs) into Medicaid Managed Care is part of the Children’s Medicaid System Transformation developed by the Governor’s Medicaid Redesign Team (MRT). The transition and enrollment of VFCA children from fee-for-service Medicaid to Medicaid Managed Care, and the VFCA Health Facility license authorized by this regulation, will enable qualified Medicaid Managed Care Organizations and VFCAs throughout the State of New York to work together to comprehensively meet the needs of children and youth in foster care. The shift of the VFCA population to Medicaid Managed Care, along with other elements of the design of the Children’s Medicaid System Transformation, will promote greater access to services and enhanced service utilization management, which will ultimately lead to improved services, better health outcomes, and greater accountability.

All VFCAs are required to provide or arrange for federal and State required assessments and ongoing treatment to children in foster care. To contract with and bill

Medicaid Managed Care Organizations, and to comply with the corporate practice of medicine requirements, VFCAs must secure this license. Under Medicaid Managed Care, VFCAs will continue to receive reimbursement for the limited health services they are licensed to provide. This license will impact approximately 18,500 who are children placed with 91 VFCAs across New York State at any given time.

Background – Health Care for Children in Foster Care

Children placed with VFCAs have a complex set of health and behavioral health care needs. VFCAs have a long-standing, proven track record of being responsive to the multi-faceted needs of children in foster care and their families, as well as local, State and federal regulatory mandates. The State’s child welfare system is characterized by a sophisticated set of relationships that includes Local Departments of Social Services (LDSS), VFCAs, community health care systems, and now Medicaid Managed Care Organizations.

As of 2015, the New York State foster care population was approximately 18,500 children, with roughly 30,000 passing through the foster care system each year. The number of children in foster care in New York State has decreased from 53,902 children in 1995 to 20,539 as of December 31, 2012, with enhanced community-based prevention services as well as enhanced services to children and youth who are placed in foster care that reduce length of stay.

Data has shown that children in the foster care system have higher rates of birth defects, developmental delay, and physical disability than children from similar socio-economic backgrounds. There is also a high prevalence of medical and developmental problems and use of inpatient and outpatient mental health services at a rate 15–20 times

higher than the general pediatric Medicaid population. The impact of the trauma these children experience is profound.

Select Problems at Entry into Foster Care¹

Select Problems at Entry into Foster Care	
Psychosocial Problems (with high percentage having experienced childhood adversity and trauma)	100%
Chronic physical health condition	35–45%
Birth defect	15%
Mental health problem	40–95%
Significant dental condition	20%
Family problems	100%
Developmental Delay in child <5 years	60%
Special education/underachievement	45%

Health care services to children in foster care must be delivered by professionals that have knowledge of the effects of abuse, neglect and trauma. It is essential that services are delivered in an effective and responsive trauma-informed primary, preventive, and behavioral health care environment that promotes the best outcomes for children in foster care.

¹ American Academy of Pediatrics Task Force on Health Care for Children in Foster Care, *Fostering Health: Health Care for Children and Adolescents in Foster Care*. (New York: American Academy of Pediatrics, 2005).; and Mark D. Simms, Howard Dubowitz and Moira A. Szilagyi, “Health Care Needs of Children in the Foster Care System,” *Pediatrics* 2000;106(4 Suppl):909-918.; and Dutton M Fiori T, Karl A, Sobelson M. Medicaid managed care for children in foster care. In: Fund Medicaid Institute at United Hospital, editor: UHF; 2013

Compliance with Medicaid Managed Care Regulatory Standards:

VFCAs are required to provide or arrange for an array of health and behavioral health care services to children in foster care. To maintain continuity of care and ensure compliance with federal and State mandates, VFCAs must be able to contract with Medicaid Managed Care Organizations. The prohibition on the corporate practice of medicine requires that Medicaid Managed Care Organizations contract with licensed organizations; these regulations support that requirement.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

VFCAs are only required to apply for a VFCA Health Facility license if they will be providing the health services described in these regulations. There is no cost to apply for a VFCA Health Facility license. VFCAs already deliver core limited health services, as defined in the regulation, to meet various state and federal requirements related to health services provided to children in foster care. By receiving a license, VFCAs will be able to bill Medicaid through managed care contracts for health services.

The requirements under section 770.5 of the new regulations, titled Assessments and Treatment Planning, are new and will require VFCAs some additional time to prepare. Additionally, some VFCAs that are not currently collecting data or performing quality improvement activities may incur some administrative costs related to meeting the quality improvement requirements of section 770.6 of the regulation.

However, the cost of these additional requirements is expected to be offset by the revenue received through billing Medicaid managed care. Accordingly, these regulations are not expected to result in net compliance costs.

Cost to State and Local Government:

See below for costs to State. There is no cost to local government.

Cost to the Department of Health:

The regulation will result in minimal additional costs to the Department of Health. It is anticipated that these new activities can be accommodated with the addition of approximately two positions to the existing resources of the Department.

Cost to the Office of Children and Family Services:

The 1915(c) waiver Program is transitioning to the Medicaid Managed Care environment. As such, OCFS staff in the Division of Child Welfare and Community Services who work in the Medicaid 1915c Bridges to Health Program will transition to the Article 29-I VFCA Health Facility Licensing Program.

Local Government Mandates:

There are no local government mandates in New York State related to this proposal.

Paperwork (DOH and OCFS):

VFCAs are only required to apply for a VFCA Health Facility license if they will be providing the health services described in these regulations. The application forms will be available on the DOH and OCFS websites.

Duplication:

This proposal does not duplicate any State or federal regulation.

Alternative Approaches (DOH and OCFS):

Article 29-I of the Public Health Law, which provides for the licensure of VFCA is the only mechanism to that will allow VFCAs to contract with Medicaid Managed Care Organizations to provide medical services, as required by the corporate practice of medicine rules.

Federal Requirements:

There are no federal requirements associated with this regulation.

Compliance Schedule:

This license will go into effect January 1, 2019. For New York State to license VFCAs, and for VFCAs to contract with Medicaid Managed Care Organizations, it is essential that these Regulations go into effect October 31, 2018.

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

VFCAs are only required to apply for a VFCA Health Facility license if they will be providing the health services described in these regulations. There are 29 VFCAs that are small business (defined as 100 employees or less), independently owned and operated, affected by this rule.

Compliance Requirements:

All VFCAs licensed under Article 29-I will be required to comply with the regulations. As part of the application process, each VFCA will attest to meeting and maintaining compliance with standards.

There are no compliance requirements associated with the regulation that impact local governments including Local Department of Social Services (LDSS).

Professional Services:

It is not anticipated that facilities will need to hire additional staff to meet this mandate.

Compliance Costs:

Compliance costs for VFCAs that are small businesses will be the same as those identified in the Regulatory Impact Statement. VFCAs are only required to apply for a VFCA Health Facility license if they will be providing the health services described in these regulations. There is no cost to apply for a VFCA Health Facility license. VFCAs

already deliver core limited health services, as defined in the regulation, to meet various state and federal requirements related to health services provided to children in foster care. By receiving a license, VFCAs will be able to bill Medicaid through managed care contracts for health services.

The requirements under section 770.5 of the new regulations, titled Assessments and Treatment Planning, are new and will require VFCAs some additional time to prepare. Additionally, some VFCAs that are not currently collecting data or performing quality improvement activities may incur some administrative costs related to meeting the quality improvement requirements of section 770.6 of the regulation.

However, the cost of these additional requirements is expected to be offset by the revenue received through billing Medicaid managed care. Accordingly, these regulations are not expected to result in net compliance costs.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

There are no alternatives to the proposal.

Small Business and Local Government Participation:

The Department has conducted many outreach programs and continues to do so. These efforts have included professional organizations representing the Voluntary Foster Care Agencies and the physicians, nurses, and other health care personnel they employ. The Department has also performed outreach to the New York Public Welfare

Association (NYPWA), which is the organization that represents county Departments of Social Services.

RURAL AREA FLEXIBILITY ANALYSIS

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined within PHL Article 29-I.

JOB IMPACT STATEMENT

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.