

Office of Temporary and Disability Assistance

Pursuant to the State Administrative Procedure Act (SAPA) § 207, the Office of Temporary and Disability Assistance (OTDA) must review at regular intervals those regulations that were adopted on or after January 1, 1997. The purpose of the review is to determine whether the regulations should be retained as written or modified. On January 31, 2018, OTDA published in the **New York State Register** a list of regulations from Title 18 of the New York Codes, Rules and Regulations (NYCRR) that OTDA adopted in 2015, 2013, 2008, 2003 and 1998. Those regulations are set forth below:

Rules adopted in 2015

1. TDA-49-14-00003 Public Assistance (PA) Schedules*

Amended 18 NYCRR §§ 352.1 and 352.2 to update certain PA schedules to comply with the schedules in Social Services Law (SSL) § 131-a.

Analysis of the need for the rule: The amendments were required in order to conform certain PA schedules set forth in 18 NYCRR §§ 352.1(a) and 352.2(d) to the non-discretionary provisions set forth in amended SSL § 131-a.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 131(1), 131-a(2)(a-1)-(a-4), and 131-a(3)(a-1)-(a-4)

2. TDA-23-15-00004 Emergency Shelter Allowances (ESA)*

Amended 18 NYCRR § 352.3(k) to update provisions for ESA for persons with AIDS or HIV-related illness to reflect statutory authority,

Analysis of the need for the rule: The amendments were needed to conform to State laws requiring social services districts (districts) to disregard the Supplemental Security Income and needs of any household member who is not the sole household member medically diagnosed with AIDS or HIV-related illness and to help ensure that districts, including New York City, are able to continue to provide the same level of housing for these individuals in need as they have in the past.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 131(1); L. 2008, ch. 53; L. 2009, ch. 53; L. 2010, chs. 58, 110; L. 2011, ch. 53; L. 2012, ch. 53; L. 2013, ch. 53; L. 2014, ch. 53; L. 2015, ch. 53

3. TDA-38-15-00005 Standard Utility Allowances for Supplemental Nutrition Assistance Program (SNAP)*

Amended 18 NYCRR § 387.12 to set forth the federally approved standard utility allowances as of October 1, 2015.

Analysis of the need for the rule: It was of great importance that the federally approved standard utility allowances for SNAP were applied to SNAP benefit calculations effective October 1, 2015. If the standard utility allowances were not updated on October 1, 2015,

it could have resulted in thousands of SNAP dependent households receiving overpayments each month. Households receiving such overpayments could be subject to an extended period of SNAP recoupments at the rate of 10% of their monthly SNAP benefits to recover the resulting overpayments of SNAP benefits. Thus, the rule was necessary for the preservation of the public health and general welfare of SNAP dependent households.

Legal basis for the rule: SSL §§ 20(3)(d) and 95; 7 USC § 2014(e)(6)(C); 7 CFR § 273.9(d)(6)(iii)

4. TDA-15-15-00003 Video Hearings*

Added 18 NYCRR § 358-5.13 to specifically allow OTDA's Office of Administrative Hearings (OAH) to conduct fair hearings by means of video equipment.

Analysis of the need for the rule: Video hearings allow the Office of Administrative Hearings (OAH) to hold more hearings by assigning individual hearing officers to hold fair hearings for multiple locations throughout the State on the same day.

Legal basis for the rule: SSL §§ 20(3)(d) and 22(8)

Rules adopted in 2013

5. TDA-36-12-00001 Fair Hearings Process for Home Energy Assistance Program (HEAP)*

Amended 18 NYCRR §§ 358-3.5(b)(4) and 393.5(e) to eliminate the requirement that a fair hearing request concerning HEAP must be made within 105 days of the social services district's termination of the receipt of HEAP applications for the program year.

Analysis of the need for the rule: These amendments were needed due to the court order and stipulation of settlement in Pedersen v. Hansell which ordered OTDA to commence rule making proceedings to eliminate the 105 day statute of limitations imposed on individuals requesting a HEAP fair hearing and clarify that federal HEAP funds are available for a finite period of time.

Legal basis: SSL §§ 20(3)(d), 22(8) and 97; 42 USC § 8621, et seq.

6. TDA-49-12-00014 Child Support*

Amended 18 NYCRR §§ 346.2 and 347.17 to address child support services applications and notification requirements and the imposition of an annual service fee; and to set forth requirements concerning the provision of legal services and the recovery of associated costs.

Analysis of the need for the rule: The amendment of § 346.2 was made to help ensure the state's compliance with federal child support application and notification requirements pursuant to 45 CFR § 302.33, which requires that states must make available all services to any individual who files an application with the child support agency, and must provide information describing available services, the individual's rights and responsibilities, the state's fees, cost recovery, and distribution policies that must accompany all applications

for services, and be provided to all applicants/recipients of Medicaid and assistance programs. In addition, the amendment to § 347.17 was made as a result of federal changes requiring the imposition of an annual service fee of \$25 for families who have never received assistance.

Legal basis: 42 USC § 654(6)(B)(ii); 45 CFR §§ 302.33 and 303.2; SSL §§ 20(3)(d), 111-a, 111-c(4)(a), 111-g(3)(a) and (b); and Family Court Act § 453(a)

7. TDA-22-12-00021 Limits on Administrative Expenses and Executive Compensation

Added 18 NYCRR Part 315 to establish limits on the use of State funds or State-authorized payments for administrative costs and executive compensation by covered providers.

Analysis of the need for the rule: The regulations, which were required by Executive Order No. 38, were needed to prevent certain providers from using State funds or State-authorized payments to support excessive compensation or unnecessary administrative costs.

Legal basis: SSL § 20(3)(d); and Not-For-Profit Corporation Law § 508

8. TDA-38-13-00008 Standard Utility Allowances for the SNAP*

Amended 18 NYCRR § 387.12 to update the standard utility allowances for SNAP to the federally approved levels as of October 1, 2013.

Analysis of the need for the rule: It was of great importance that the federally approved standard utility allowances for SNAP were applied to SNAP benefit calculations effective October 1, 2013. If the standard utility allowances were not updated on October 1, 2013, it could have resulted in thousands of SNAP dependent households receiving underpayments each month. Thus, the rule was necessary for the preservation of the public health and general welfare of SNAP dependent households.

Legal basis: SSL §§ 20(3)(d) and 95; 7 USC § 2014(e)(6)(C); and 7 CFR § 273.9(d)(6)(iii)

Rules adopted in 2008

9. TDA-02-08-00002 Recertification of Public Assistance Recipients*

Amended 18 NYCRR § 351.21(b), (c) and (f)(5) and 351.22(a), (b), (c)(1), and (f), and added 18 NYCRR § 351.22(b)(3) to provide for a waiver, by the social services districts (Districts), of face-to-face recertification requirements, subject to OTDA approval.

Analysis of the need for the rule: The amendments were developed to provide Districts the opportunity to request waivers from the OTDA of certain face-to-face recertification interviews for public assistance recipients.

Legal basis for the rule: Social Services Law (SSL) §§ 20(3)(d), 34(3)(f), 131(1), 134-a(3), and 355(3).

10. TDA-28-08-00002 HEAP*

Amended 18 NYCRR § 393.4(c)(3), (5); renumbered 18 NYCRR § 393.4(c)(4) to be § 393.4(c)(5) and added 18 NYCRR § 393.4(c)(4) to establish a new HEAP benefit level for low-income households in certain living arrangements.

Analysis of the need for the rule: The amendments were developed to establish a new HEAP benefit level for low-income households in certain living arrangements in order to enhance participation and benefits for certain Food Stamp Program applicants and recipients. By federal regulation, receipt of a HEAP benefit enables food stamp applicants or recipients to maximize the Food Stamp Standard Utility Allowance. (Note: the Food Stamp Program was renamed the “Supplemental Nutrition Assistance Program” [SNAP] on August 29, 2012.

Legal basis for the rule: Chapter 94 of Title 42 of the United States Code (U.S.C.); 42 U.S.C. § 8624(c), (b)(12); SSL § 97(1), (2).

11. TDA-28-08-00003 Food Stamp Program*

Amended 18 NYCRR § 387.16(e) and (f) and added 18 NYCRR § 387.16(e)(1)-(2) and (f)(1)-(2) to establish a new food stamp budgeting methodology for certain residents in group living arrangements.

Analysis of the need for the rule: The amendments were developed to establish a new, equitable method of calculating the food stamp benefits for residents of group living facilities and drug or alcoholic treatment facilities. It eliminated the differences between the food stamp benefit calculations done for residents who receive public assistance and those who receive Supplemental Security Income (SSI) by basing the calculations on the pertinent SSI rates.

Legal basis for the rule: Chapter 51 of Title 7 of the USC; 7 USC §§ 2011 and 2013; SSL §§ 95 and 95-a.

Rules Adopted in 2003

12. TDA-32-02-00004 Shelter Allowance*

Amended 18 NYCRR Part 352 and § 381.3(c) to establish new provisions concerning the shelter allowance.

Analysis of the need for the rule: The amendments were developed in order to provide a shelter allowance that reflected the cost of acceptable quality housing; provide for a supplement to ensure that family units facing special circumstances may be kept together in a home-type setting; maintain strong incentives to work; increase fairness and equity in the provision of public benefits; affect household composition; and simplify grant administration.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), 131-a(2), 158, 349, and 355(3).

13. TDA-49-02-00006 Adjustment of Public Assistance Grants*

Amended 18 NYCRR § 352.17(e), which established that when a report of a new or increased earned income is made timely by the recipient, the district must adjust the grant or calculate the amount of any overpayment only after a reasonable administrative processing period has passed.

Analysis of the need for the rule: The amendments were developed to: encourage public assistance recipients to obtain employment and become self-sufficient; permit public assistance recipients to pay for employment-related expenses before their benefit levels are reduced; and allow Districts to adjust benefit levels without also having to calculate an overpayment of assistance.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 131(1), 131-a, and 355(3).

14. TDA-49-02-00007 Public Assistance and Food Stamps*

Amended 18 NYCRR §§ 350.3(a), 387.1(e)(1), and 387.5(j) and (k) limit the use of an authorized representative to persons who establish a good cause reason that prevents them from applying for public assistance or food stamps.

Analysis of the need for the rule: The amendments were developed to help ensure that the information given to a case worker by an authorized representative concerning a person's eligibility for public assistance or food stamps is accurate and reflects existing household circumstances. The amendments affecting the Food Stamp Program implement federal regulations.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 95, 131(1), and 355(3); Title 7, Part 273, § 2, subdivision (n) of the CFR.

15. TDA-49-02-00008 Vehicle Resource Level*

Amended 18 NYCRR § 352.23(b) to establish resource exemption levels for vehicles owned by public assistance recipients and authorize Districts to exempt, as a resource, funds deposited in a bank account by such recipients if the account did not exceed a certain level and if the funds were used to purchase a first or used vehicle to enable the recipients to seek, obtain, or maintain employment.

Analysis of the need for the rule: The amendments were developed to implement legislative changes to the SSL at that time.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), 131-n, and 355(3).

16. TDA-49-02-00009 Eligibility for Emergency Assistance to Needy Families with Children (EAF)*

Amended 18 NYCRR §§ 369.1, 372.2 and 372.4 to conform the EAF regulations to federal laws and regulations; eliminate the potential for federal penalties for incorrect use of funds in the EAF program; and remove unnecessary and restrictive limits on the amount of EAF benefits that can be provided to repair an EAF recipient's home.

Analysis of the need for the rule: The amendments were developed to: eliminate the potential for federal penalties; conform the regulations to federal law and regulations; and remove an unnecessary limit on the amount of EAF benefits that can be used to repair an EAF recipient's home.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 350-j, 355(3) and 410-u; Social Security Act §§ 404(a)(2), 408(a)(1)(A), and 409(a)(1)(A) and (B). The referenced SSL sections required OTDA to promulgate regulations necessary for the implementation of the provisions of the EAF program.

17. TDA-49-02-00010 Food Stamp Certification Periods*

Amended 18 NYCRR § 387.17(a) to extend, from 12 months to 24 months, the food stamp certification period for households in which all adult members are elderly or disabled.

Analysis of the need for the rule: The amendments were developed to: implement federal requirements concerning food stamp certification periods; significantly ease and streamline the processing procedures for Districts; and enhance access to food stamps for elderly or disabled persons.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 95; Title 7, Part 273, § 10, subdivision (f) of the CFR.

18. TDA-49-02-00011 Eligibility for Food Stamps*

Amended 18 NYCRR §§ 358-2.28, 358-2.29, 358-3.1(f), 387.7(a) and (g), 387.14(g)(1)(ii) and 387.17 to implement federal requirements concerning the food stamp application and certification processing requirements.

Analysis of the need for the rule: The amendments were developed to: implement federal requirements concerning the food stamp application and certification processing requirements; significantly ease and streamline the processing procedures for Districts; and enhance access to food stamps for eligible households.

Legal basis: SSL §§ 20(3)(d), 34(3)(f) and 95; Title 7, Part 273, §§ 2, 10, and 12 of the CFR.

19. TDA-19-03-00008 Eligibility for Food Stamps*

Amended 18 NYCRR § 387.14(a)(5)(i) and (ii) to extend categorical eligibility for food stamps to recipients of Safety Net Assistance (SNA).

Analysis of the need for the rule: The amendments were developed to extend categorical eligibility for food stamps to recipients of SNA.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 95.

20. TDA-19-03-00009 Eligibility for SNA*

Amended 18 NYCRR § 352.20(c) to allow for the percentage earned income disregard to be provided to all SNA cases eligible for family assistance (FA) except for the imposition of the 60-month State limit on the receipt of FA.

Analysis of the need for the rule: The amendments were developed to allow for the percentage earned income disregard to be provided to all SNA cases eligible for FA except for the imposition of the 60-month State limit on the receipt of FA.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131-a(1), 131-a(8)(a)(iii), 158, 349, and 355(3).

21. TDA-19-03-00010 Fair Hearings*

Amended 18 NYCRR Part 358 to make technical changes that were primarily needed to conform the regulations concerning fair hearings to the Welfare Reform Act of 1997.

Analysis of the need for the rule: The changes, in part, reflected the following: the creation of OTDA and the Office of Children and Family Services (OCFS); the responsibility of the Department of Health for the medical assistance program; the responsibility of the Department of Labor for the public assistance employment programs (subsequently repealed); the responsibility of OCFS for certain services programs; and the responsibility of the Office of Administrative Hearings within OTDA for conducting hearings on behalf of such agencies. The addition of § 358-5.9(e) concerned the issuance of subpoenas in fair hearings.

Legal basis: Chapter 436 of the Laws of 1997, constituting the Welfare Reform Act of 1997; SSL §§ 20(3)(d), 22(8), and 34(3)(f).

22. TDA-20-03-00001 Trust Assets*

Amended 18 NYCRR § 352.22(e)(1) and repealed 18 NYCRR § 352.22(e)(2) to clarify the regulations concerning the treatment of trust funds and the eligibility for public assistance.

Analysis of the need for the rule: The amendments revised the regulations concerning the treatment of trust assets for purposes of determining whether such assets can be used to provide for the basic maintenance needs of the trust beneficiary when such beneficiary was in receipt of or applied for public assistance.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), 131-n, and 355(3).

23. TDA-23-03-00002 Food Stamp Reporting*

Amended 18 NYCRR §§ 358-3.3(e)(3), 387.14(a)(5)(ii)(b), and 387.17 to establish new requirements for reporting information to Districts concerning eligibility for food stamps.

Analysis of the need for the rule: The amendments were developed to: implement federal regulations concerning the food stamp application and certification processing requirements; and simplify the reporting requirements for food stamp recipients with earnings.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 95; Title 7, Part 273, §§ 10 and 12 of the CFR.

Rules Adopted in 1998

24. TDA-49-97-00007 Food Assistance Program*

Amended the Title of 18 NYCRR Part 358 and 18 NYCRR § 358-1.1, and added 18 NYCRR Part 388 and § 358-2.27 to implement the Food Assistance Program, consistent with State law at that time.

Analysis of the need for the rule: The amendments were developed to implement the Food Assistance Program.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 95(10).

25. TDA-02-98-00003 Child Assistance Program (CAP)

Added 18 NYCRR Part 366 to implement provisions of Chapter 436 of the Laws of 1997 concerning the CAP.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997 concerning the CAP, which was a district optional component of the FA program designed to encourage FA recipients to take steps towards financial self-sufficiency.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131-z.

26. TDA-02-98-00004 Law Enforcement Cooperation*

Amended 18 NYCRR § 357.3 to implement provisions of Chapter 436 of the Laws of 1997 concerning law enforcement cooperation.

Analysis of the need for the rule: The amendments, permitting social services officials to contact law enforcement officials under certain circumstances, were developed to implement SSL § 136, as amended by Chapter 436 of the Laws of 1997, and to implement mandatory provisions of § 408 (a)(9)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193).

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 136.

27. TDA-02-98-00005 Earned Income Disregards for Recipients of Public Assistance

Repealed 18 NYCRR § 352.17(b)(1)(iii) and amended 18 NYCRR §§ 352.18, 352.19, and 352.20 to implement provisions of Chapter 436 of the Laws of 1997 concerning the calculation of earned income disregards for recipients of public assistance.

Analysis of the need for the rule: The amendments were developed to implement Chapter 436 of the Laws of 1997, which revised certain income disregards used in calculating eligibility for public assistance.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131-a; Chapter 436 of the Laws of 1997.

28. TDA-02-98-00006 Sanctions for Non-Compliance

Amended 18 NYCRR § 352.30 to provide sanctions for noncompliance with work rules and drug or alcohol screening.

Analysis of the need for the rule: The amendments were developed to implement Chapter 436 of the Laws of 1997, which changed the sanction from an incremental reduction of benefits to a pro rata reduction of benefits for a failure to comply with the work requirements of 18 NYCRR Part 385. A similar sanction was imposed by Chapter 436 of the Laws of 1997 on persons who failed to participate in a drug or alcohol screening program.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 132(4)(f), and 342; Chapter 436 of the Laws of 1997.

29. TDA-02-98-00007 Local Flexibility Incentive Pilot Programs

Added 18 NYCRR § 300.9 to implement provisions of Chapter 436 of the Laws of 1997 concerning local flexibility incentive pilot programs.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997 concerning local flexibility incentive pilot programs to enable Districts to develop and implement innovative, flexible and efficient human service programs.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 36-b; Chapter 436 of the Laws of 1997.

30. TDA-02-98-00008 Intentional Program Violations

Amended 18 NYCRR § 352.30 and Part 359 to impose sanctions for intentional program violations in the FA and SNA Programs.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997 concerning the imposition of sanctions for intentional program violations in the FA and SNA Programs.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 145-c; Chapter 436 of the Laws of 1997.

31. TDA-02-98-00009 SNA Program*

Amended 18 NYCRR Part 370 to provide the standards for the SNA Program.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which included the replacement of the term "home relief" with "safety net assistance" throughout the Part. Many of the requirements for home relief remained under the SNA Program; however, the amendments added several new provisions for eligibility for, and the provision of, SNA.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 157 -159; Chapter 436 of the Laws of 1997.

32. TDA-02-98-00010 Replacement of Identification Cards*

Amended 18 NYCRR §§ 383.1 and 383.3 to implement provisions concerning when the identification card of a PA recipient should be replaced.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which required Districts to provide a recipient of PA with a replacement identification card within a certain time period.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131(19); Chapter 436 of the Laws of 1997.

33. TDA-02-98-00011 Electronic Benefit Transfer System

Amended 18 NYCRR §§ 381.1 and 381.2 to implement the Statewide electronic benefit transfer system.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997 concerning the establishment of a Statewide electronic benefit transfer system, which provides recipients increased security and convenience in accessing their benefits, while also reducing benefit fraud.

Legal basis: SSL §§ 20(3)(d), 21-a, and 34(3)(f).

34. TDA-02-98-00012 Eligibility for FA*

Amended 18 NYCRR Part 369 to implement provisions of Chapter 436 of the Laws of 1997 concerning eligibility for FA.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which included replacing the term “aid to dependent children” with the term “family assistance” throughout the Part. Many of the requirements for aid to dependent children remained under the FA program; however, the amendments added several new provisions for eligibility for, and the provision of, FA.

Legal basis: SSL §§ 2(18), 20(3)(d), 34(3)(f), 131(6), 344, 349, and 350(c)(2); Chapter 436 of the Laws of 1997.

35. TDA-02-98-00013 Screening for Alcohol and/or Drug Abuse*

Added 18 NYCRR § 351.2(i), requiring that applicants for or recipients of public assistance be screened for alcohol and/or drug abuse and attend appropriate treatment programs as necessary.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which required screening for alcohol and/or substance abuse of all heads of households and adult applicants for public assistance.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 132; Chapter 436 of the Laws of 1997.

36. TDA-02-98-00014 Exemption of Income and Resources for Public Assistance

Amended 18 NYCRR § 352.23(a), (b), and (d) to provide for the exemption of certain income and resources for public assistance eligibility.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which amended the provisions for the exemption of certain income and resources when determining public assistance eligibility in order to more closely align the public assistance resource policy with that of the Food Stamp Program.

Legal basis: SSL §§ 20(3)(d), 34(3)(f) and 131-n; Chapter 436 of the Laws of 1997.

37. TDA-02-98-00015 Recovery of Assistance for Basic Needs

Amended 18 NYCRR § 353.2(a) and (b) to clarify that interim assistance that is subject to recovery may include FA, if paid exclusively from State and local funds.

Analysis of the need for the rule: The amendments were developed to implement Chapter 436 of the Laws of 1997, which renamed the programs for which interim assistance may be recovered, and clarified that interim assistance could be recovered from non-federally funded FA provided to persons, or households containing such persons, who are permanently disabled and awaiting determinations of eligibility for federal SSI benefits.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 349(B)(2); Chapter 436 of the Laws of 1997.

38. TDA-02-98-00016 Individual Development Accounts

Added 18 NYCRR § 352.21 to implement the establishment of individual development accounts.

Analysis of the need for the rule: The amendments were developed to implement Chapter 436 of the Laws of 1997, which permitted individuals who are receiving FA to accumulate funds in certain individual development accounts.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 358(5); Chapter 436 of the Laws of 1997.

39. TDA-02-98-00017 Standards for Ineligibility for Public Assistance

Amended 18 NYCRR §§ 351.1(b)(2)(iv), 352.30(d)(2)-(4), and 387.1(w) and added 18 NYCRR § 351.2(k) concerning standards for ineligibility for public assistance.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which prohibited the following persons from receiving assistance: unmarried persons under 18 years old who are with a child and who have not completed or are not attending high school; fugitive felons and probation and parole violators; persons convicted of illegally receiving duplicate benefits; and minors absent from their homes.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131; Chapter 436 of the Laws of 1997.

40. TDA-02-98-00018 FA and SNA

Added 18 NYCRR § 350.1(d) to provide technical consistency and clarify the regulatory language relative to the PA Program.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which established the FA Program and the SNA Program. The amendments stated that references to “aid to dependent children” refer to “family assistance” and that references to “home relief” refer to “safety net assistance.” The amendment defined “public assistance” as referring to FA, SNA, and veteran assistance.

Legal basis: SSL §§ 2, 20(3)(d), and 34(3)(f); Chapter 436 of the Laws of 1997.

41. TDA-02-98-00019 Eligibility of Non-Citizens for FA

Repealed 18 NYCRR §§ 349.3 and 352.33 and added new 18 NYCRR §§ 349.3 and 352.33 to: conform the State's eligibility requirements for federally funded assistance to federal law; exercise federal options for the eligibility of certain persons; and set forth the requirements for eligibility for State funded programs.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which addressed the eligibility of non-citizens for FA, SNA, food stamps, Title XX benefits, and additional State payments in the SSI Program. The amendments established requirements for deeming the income of an alien's sponsor available to the alien for purposes of eligibility for various programs.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 122; Chapter 436 of the Laws of 1997.

42. TDA-02-98-00036 Finger Imaging

Amended 18 NYCRR §§ 351.2, 384.1, 384.2(b) and (c), and 384.3(a)(3), and added 18 NYCRR §§ 387.9(c) and 388.8 to extend the scope of the automated finger imaging system.

Analysis of the need for the rule: The amendments were developed to implement provisions of Chapter 436 of the Laws of 1997, which required Districts to obtain finger images of applicants for and recipients of SNA, emergency SNA, EAF, public institutional care adults, FA, food stamps, or food assistance benefits. (Note: effective November 1, 2012, finger imaging was eliminated for purposes of administering SNAP).

Legal basis: SSL §§ 17, 20(3)(d), 34(3)(f), 131(1), 134-a, 139-a, 158, and 355(3); Chapter 436 of the Laws of 1997.

43. TDA-12-98-00018 Repayment of Grants for Energy Arrears

Amended 18 NYCRR § 352.5(e) to revise the regulations concerning who must sign an agreement to repay emergency assistance provided to pay utility arrears.

Analysis of the need for the rule: The amendments were developed to clarify the regulations concerning who must sign an agreement to repay emergency assistance provided to pay utility arrears.

Legal basis: SSL §§ 17, 20(3)(d), 34(3)(f), 131(1), 131-s, 158, and 355(3).

44. TDA-15-98-00002 Nazi Persecution Payments

Added 18 NYCRR § 352.22(aa) to exempt payments to victims of Nazi persecution in determining eligibility for public assistance.

Analysis of the need for the rule: The amendments were developed to exclude reparation payments made to victims of Nazi persecution from consideration in determining eligibility for and the amount of benefits to be paid under certain public assistance programs.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131-n(2) .

45. TDA-15-98-00003 Immunizations*

Added 18 NYCRR § 355.1(c) to require Districts to provide information and a schedule regarding age-appropriate immunizations to certain applicants for and recipients of public assistance.

Analysis of the need for the rule: The amendments were developed to require that Districts provide all applicants for and recipients of public assistance whose households include a child five years of age or younger with information and a schedule regarding age-appropriate immunizations. The amendments also required that Districts must provide such applicants and recipients with information about eligibility for free vaccinations for children.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131(13).

46. TDA-19-98-00016 Recoveries of Public Assistance

Amended 18 NYCRR § 352.31(d)(5) to raise the threshold amount of public assistance to be recovered from an individual no longer receiving assistance, from \$35 to \$125.

Analysis of the need for the rule: The amendments were developed to relieve Districts from the administrative burden of collecting overpayment amounts which are so small that collection is not cost effective.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 106-b.

47. TDA-25-98-00006 Domestic Violence Protection*

Amended §§ 347.5 (g) and (h), 351.2(l), 357.3(i), 358-3.1(b), 358-3.3, and 369.2(b)(1)(iv) to implement procedures for domestic violence screening, assessment, and referral programs for applicants for and recipients of public assistance.

Analysis of the need for the rule: The amendments were developed to establish the procedures for the State's domestic violence screening, assessment, and referral program in order to provide care, support, and protection to those applicants for and recipients of public assistance who are victims of domestic violence.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 349-a.

OTDA received one set of public comments regarding its Rule Review published in the New York State Register on January 31, 2018. The comments addressed several entries.

Two comments related to amendments to 18 NYCRR § 387.12 (Standard Utility Allowances for the SNAP), and suggested that OTDA “reconsider the historic basis for computing” SNAP standard utility allowances, particularly regarding the amounts factored in for water, sewer and trash collection components of the SNAP standard utility allowances. OTDA disagrees with these comments. The baseline OTDA uses to configure the Statewide standard utility allowance allotments are tied to the Consumer Price Index (CPI) and includes water, sewer and trash components. The allotments are adjusted yearly and approved by the United States Department of Agriculture (USDA).

One comment related to amendments to 18 NYCRR § 358-5.13 (Video Hearings), and suggested that OTDA address its ongoing “monitoring and evaluation of video hearings” and the results thereof in this Rule Review. OTDA has monitored the video hearings process and continues to do so, thereby safeguarding the parties’ due process rights.

One comment related to amendments to 18 NYCRR Part 352 and § 381(c) (Shelter Allowance), and suggested that OTDA “undertake a comprehensive evaluation of the cost of housing in each of the 58 social services districts across the state and ... propose and adopt significant increases in the shelter allowances.” OTDA considered this comment. Shelter allowance rates are set at a level to advance the policy that publicly-provided cash benefits should be adequate to meet basic needs, and that recipients should be encouraged through work incentives to purchase higher quality housing if desired. It is important to note that increases in the shelter allowance cause a decrease in SNAP benefits due to the increase in the public assistance (PA) standard of need. This results in a reduction in essential benefits for the clients while allowing landlords to profit. OTDA acknowledges that some social services districts (districts) have extraordinary housing situations, including high rates of homelessness, evictions and rental costs. In 2003, when the current shelter allowance was enacted, it was recognized that not all PA recipients would have rents at or below the shelter allowance. Therefore, districts were provided with the ability to request State approval for a shelter allowance supplement, which would allow districts to provide additional rental assistance to PA recipients without affecting their SNAP benefits. The rent supplement provides a flexible, cost-effective means for districts to supplement the shelter allowance and to respond to the housing problems of particular individuals and families as needed, rather than implementing a costly across-the-board increase in the shelter allowance for all recipients. The rent supplement also provides the means for a district to respond to district-specific housing issues that may affect housing access. For these reasons, it is imperative that each district have the option to implement its own rent supplement program in order to design a program that meets the particular needs of the locality, which often vary widely between rural and urban districts. Generally, rent supplements are disbursed only to homeless households, so they can transition into permanent housing, and to those households having difficulty meeting their rent payments and, consequently, are at high risk of becoming homeless. As with any PA benefit, rent

supplements are designed to provide *temporary* assistance to recipients until they can obtain a level of self-sufficiency which allows them to transition off PA and to afford to make their rent payments on their own. Currently, 17 districts offer approved shelter supplement plans for single adults and childless couples, and 6 districts offer approved shelter supplement plans for families.

One comment related to amendments to 18 NYCRR § 352.17(e) (Adjustment of PA Grants), and suggested that OTDA increase the minimum threshold for recoveries of PA payments to \$1,000, consistent with the Social Security Administration's (SSA's) policy relative to Supplemental Security Income (SSI) overpayments. OTDA disagrees with this comment. 18 NYCRR § 352.31(d)(5) provides a district the ability to determine if recovery of an overpayment on a closed PA case is cost effective, regardless of the \$125 threshold:

When the overpayment is \$125 or more and does not involve fraud, social services districts may elect to discontinue collection procedures when it is determined that the cost of recovery is greater than the cost of collection and reasonable efforts to recover the overpayment have been made. *Reasonable efforts* must include notification of the amount of and reason for the overpayment and that repayment is required (emphasis original).

Increasing the threshold for recovery would impair the ability of districts to recover significant amounts of benefits that were improperly received – including those received under Safety-Net Assistance (SNA), for which districts pay 71 percent of the costs.

One comment related to amendments to 18 NYCRR §§ 369.1, 372.2, and 372.4 (Eligibility for Emergency Assistance to Needy Families with Children [EAF]), and suggested that OTDA amend 18 NYCRR § 372.4(a) to include language permitting the use of EAF funds for medical services. OTDA disagrees with this comment. Federal law prohibits Temporary Assistance for Needy Families (TANF) funds from being used for medical services (42 *United States Code Annotated* [USCA] § 608[a][6]), and, consistent therewith, OTDA amended State regulations in 1999 to also preclude the use of EAF funds for medical services. OTDA also notes that, per Social Services Law (SSL) § 350-j(1), “Any inconsistent provisions of this chapter or any other law notwithstanding, so long as federal aid is available therefor, a social services district shall provide emergency assistance” Insofar as federal law prohibits the use of federal monies for medical services, the use of EAF funds for medical services would be inconsistent with federal law.

One comment related to amendments to 18 NYCRR § 387.17(a) (Food Stamp Certification Periods), and suggested that OTDA “amend 18 NYCRR § 387.17(a)(2) ... to reflect the 48 month certification period authorized under the federally-approved New York State Nutrition Improvement Project (NYSNIP).” OTDA is presently considering this suggestion.

One comment related to amendments to 18 NYCRR § 387.14(a)(5)(i)–(ii) (Eligibility for Food Stamps), and suggested that OTDA “amend 18 NYCRR § 387.14(a)(5) to incorporate SNAP's expanded categorical eligibility provisions.” OTDA notes that amendments to 18 NYCRR §387.14(a)(5), incorporating expanded categorical eligibility provisions for the SNAP, were previously adopted in September 2017.

One comment related to amendments to 18 NYCRR § 352.30 (Sanctions for Non-Compliance), and suggested that OTDA amend 18 NYCRR §§ 385.11 and 385.12 to reflect statutory changes to SSL §§ 341-a and 342-a, respectively, regarding Temporary Assistance (TA) conciliation and sanctions. OTDA has published a Notice of Proposed Rule Making that addresses this comment, and OTDA is assessing the public comments received.

One comment related to amendments to 18 NYCRR § 300.9 (Local Flexibility Incentive Pilot Program [Program]), and suggested that OTDA amend 18 NYCRR § 300.9 to remove references to the New York State Department of Labor (DOL), and to establish preconditions for OTDA approval of districts' pilot programs, including: (1) district solicitation of public comment on the proposed pilot program; (2) posting the proposed pilot program's rules on district websites and providing copies of such rules to all program participants; and (3), relative to proposed pilot programs in New York City, mandated compliance with the New York City Administrative Procedure Act (CAPA). OTDA disagrees with this comment. OTDA counters that removal of regulatory references to the DOL is unnecessary, given that the current regulatory language of 18 NYCRR § 300.9(a) references OTDA establishment of the Program *in cooperation with* the DOL (emphasis supplied). OTDA also asserts that the suggested preconditions for OTDA approval of such programs are recommendations devoid of statutory support. Moreover, such strictures would impair the abilities of the districts and OTDA to effectively oversee discretionary spending and implement meritorious programs.

OTDA is considering amendments that may impact the regulatory changes that were adopted in 2015, 2013, 2008, 2003, and 1998. OTDA is considering the following regulatory amendments: amend regulations to clarify the requirements for income withholding for persons served by the Title IV-D child support program (IV-D) to conform with changes to the federal IV-D Income Withholding Order/Notice for Support (IWO) form; amend regulation to update and clarify standards pertaining to hotels and motels used as placements for recipients of temporary housing assistance; revise regulation to clarify that disqualification consent agreements are reviewable at a fair hearing to ensure compliance with procedural requirements; revise regulations to raise the level of the minimum annual HEAP or other energy assistance benefit required to confer eligibility for the SNAP Heating and Cooling Standard Utility Allowance (HCSUA) from \$1.00 to \$21.00; delete SNAP monthly reporting/retrospective budgeting references and add provisions for change reporting; amend SNAP certification period to reflect the 48-month certification period authorized under NYSNIP; and update regulations to reflect the current policy that standard allowances for heating/air conditioning, utility and telephone costs are used in calculating shelter expenses for SNAP. At this time, OTDA has determined that no additional modifications, other than those set forth above, need to be made to its regulations adopted in 2015, 2013, 2008, 2003, and 1998, as amended or otherwise modified.

OTDA has determined that in the ensuing calendar year, it should review certain regulations from Title 18 NYCRR adopted in 2016, 2014, 2009, 2004 and 1999. These regulations, listed below, are subject to the provisions of SAPA § 207. The regulations must be reviewed to determine whether they should be retained as written or modified. OTDA invites written comments on the continuation or modification of these regulations in order to assist in the required review. We will consider only those comments that are received by April 30, 2019.

Rules adopted in 2016

A. TDA-03-16-00001 Referrals of Human Trafficking Victims from Established Providers of Social or Legal Services*

Amended 18 NYCRR 765.1 and 765.2 to clearly define the participant agencies that are statutorily authorized to participate in the referral process.

Analysis for the need for the rule: These amendments were needed to conform State regulations with Chapter 368 of the Laws of 2015.

Legal basis for the rule: SSL § 20(3)(d); L. 2015, ch. 368; L. 2011, ch.24; L. 2007, ch. 74; SSL Article 10-D

B. TDA-45-15-00012 Public Assistance (PA) Resources Exemption for Four-Year Accredited Post-Secondary Educational Institutions

Amended 18 NYCRR 352.23(b)(4) to exempt up to \$1,400 for funds in a separate bank account for the sole purpose of paying tuition at two-year or four-year accredited post-secondary educational institutions, so long as the funds are not used for any other purpose.

Analysis for the need for the rule: By allowing PA recipients to utilize the exempt resources amount for either a two-year or four-year accredited educational institution, the regulatory amendment offers PA recipients enhanced educational options to advance their workforce readiness and financial earning capabilities through the pursuit of higher education.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 131(1) and 131-n; L. 2014, ch. 58, part J, § 5

C. TDA-45-15-00011 Burden of Proof at Fair Hearings Challenging Interim Assistance Reimbursement (IAR) Amounts

Amended 18 NYCRR 358-5.9(a) to clarify the burden of proof for fair hearings concerning Interim Assistance reimbursement (IAR). The amendments provided that a social services district must establish that its actions were correct at a fair hearing concerning the amount deducted from the initial payment of supplemental security income as reimbursement of PA.

Analysis for the need for the rule: The amendments rendered State regulations consistent with case precedents set by the New York State courts.

Legal basis for the rule: SSL §§ 20(3)(d), 22(8) and 95; L. 2012, ch. 41

D. TDA-47-15-00004 Child Support Program*

Amended 18 NYCRR §§ 346.2, 347.12, 341.17, 347.25, 352.15, 352.22, 352.31, and 369.1; repealed and added new §§ 347.2 and 347.13, and added § 300.13 to amend

regulatory requirements concerning the distribution and disbursement of child support collections.

Analysis of the need for the rule: These amendments were required to comply with federal statutes and requirements.

Legal basis for the rule: SSL §§ 17(a)-(b), (i), 20(2)-(3), 34, 111-a, 111-c(2)(a), (d), 131-a(8)(a)(v), 158(5)-(6)(i), 348(2)-(3); Federal Social Security Act, §§ 408(a)(3), 457; 45 CFR §§ 302.32, 302.50-302.52, 303.72 Federal Deficit Reduction Act of 2005 (P.L. 109-171)

E. TDA-20-15-00001 Information Appropriate for Victims of Sexual Assault*

Added 18 NYCRR § 351.2(m) to require districts to make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault

Analysis of the need for the rule: The amendment increased outreach to victims of sexual assault and promoted access to essential services necessary for victims of sexual assault to overcome the physical, mental and emotional trauma associated from such abuse.

Legal basis for the rule: SSL §§ 17(a)-(b), (i), 20(2)-(3)(d), 34(3)(f) and 131(20); L. 2009, ch. 427

F. TDA-27-15-00002 Child Support Federal Incentive Payments*

Amended 18 NYCRR Part 347.16 in order to establish the procedures by which the State distributes child support incentives received from the U.S. Department of Health and Human Services and allocate portions of those incentives to districts.

Analysis of the need for the rule: The amendment complied with changes to the federal incentive payment process under the Child Support Performance and Incentive Act (CSPIA).

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 111-a; 42 USC § 658a; 45 CFR, §§ 302.55, 303.52, 305.2, 305.31, 305.33

G. TDA-37-15-00005 Monthly Shelter Supplements*

Amended 18 NYCRR § 352.3(a)(3)(i) in order to update State regulations to reflect current State law by extending the authority to provide additional monthly shelter supplements to eligible public assistance applicants and recipients, including single adults and childless couples.

Analysis of the need for the rule: For homeless households that are moving from temporary housing to permanent housing, public assistance can be a stabilizing factor allowing households to begin working or increase earnings as they receive assistance to help pay bills, purchase food and meet their monthly rent. When necessary, rent

supplements are also a stabilizing factor to help pay for some of the rent until the households become self-sufficient.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 131(1); L. 2009, 2011-2015, Ch. 53; L. 2010, chs. 58, 110

H. TDA-39-15-00016 Temporary Housing Placements*

Amended 18 NYCRR §§ 352.8(b)(1) and 352.3(h) and added § 352.3(m) to adjust the rate approval process for temporary housing placements and expand the scope of inspections for such placements.

Analysis of the need for the rule: OTDA's review and approval of the room and board rates help ensure that rates for temporary housing negotiated between districts and temporary housing providers are fair and affordable, and that they include services necessary to assist vulnerable families and individuals in their transitions out of homelessness. The expansion of inspections promotes greater accountability by districts for the quality of the temporary housing that is utilized.

Legal basis for the rule: SSL §§ 20(2), (3)(d), 34 and, 131-v(4)

I. TDA-06-16-00016 Emergency Shelters for the Homeless*

Added 18 NYCRR § 352.37 to allow OTDA full authority to take immediate emergency action against facilities and districts that are not providing emergency shelter that comports with prescribed standards.

Analysis of the need for the rule: The regulation helps ensure that emergency shelters are maintained in safer, more sanitary conditions, and that the welfare of residents is better protected.

Legal basis for the rule: SSL §§ 17(a)-(b), (i), 20(2)-(3), 34, 460-c and 460-d; Executive Law § 43(1); General Municipal Law § 34; State Finance Law § 109(4); New York City Charter § 93; Buffalo City Charter, ch. C, art. 7, § 7-4

J. TDA-19-16-00007 SNAP

Amended 18 NYCRR § 387.9(a)(7)(ii)(a)-(b)(2)-(3); and added 18 NYCRR § 387.9(a)(7)(ii)(c) to provide that in the event one or more household members no longer reside with a household terminated for refusal to cooperate, the penalty for refusal to cooperate will attach to the household of the person(s) refusing to cooperate.

Analysis of the need for the rule: The amendments are necessary to bring the State regulations concerning household cooperation with quality control reviews into compliance with federal statutes and regulations.

Legal basis for the rule: 7 USC, ch. 51 (generally) and §§ 2011 and 2013; 7 CFR § 273.2(d); SSL §§ 17(a)-(b) and (j), 20(3)(d), 34(3)(f) and 95; L. 2012, ch. 41

K. TDA-21-16-00005 Income Withholding of Child or Combined Child and Spousal Support

Amended Part 344 of 18 NYCRR and § 347.9 in order to update State regulations related to income withholding of child support or combined child and spousal support for persons who are not served by Part D of Title IV of the federal Social Security Act and for persons who are in receipt of Title IV-D services, respectively.

Analysis of the need for the rule: The regulatory amendments were necessary to render the State regulations consistent with Civil Practice Law and Rules (CPLR) §§ 5241 and 5242, SSL § 111-b(14), and federal law.

Legal basis for the rule: 42 USC §§ 651, 654b, 666(a)(8)(B)(iii) and (b)(6); CPLR §§ 5241 and 5242; SSL §§ 17(a)-(b), (j), 20(3)(d), 34(3)(f), 111-a and 111-b(14)

L. TDA-25-16-00002 Emergency Shelters*

Added 18 NYCRR 352.38 to address security measures and incident reporting in shelters for the homeless. The regulatory amendments required the operator of each emergency shelter to submit to OTDA and the district in which the emergency shelter is located an annual security plan for the emergency shelter. In addition, each district shall submit an annual plan to OTDA to help ensure that emergency shelters operating within the district are providing security and taking appropriate measures to protect the physical safety of emergency shelter residents and staff. Additionally, the regulatory amendments would clarify not only that reports of all serious incidents impacting upon the safety and well-being of shelter residents or staff must be documented and timely submitted to OTDA, but also OTDA's authority to direct a district or emergency shelter operator to take additional security measures where an incident is reported.

Analysis of the need for the rule: The regulations help ensure that reasonable security measures are implemented at emergency shelters and that the safety of emergency shelter residents and staff is protected.

Legal basis for the rule: Social Services Law, §§ 17(a)-(b), (j), 20(2)-(3), 34, 460-c and 460-d

M. TDA-22-15-00005 SNAP*

Amended 18 NYCRR § 387.1, and added § 387.25 to update regulations for the Transitional Benefits Alternative (TBA) program, which provides additional federally funded SNAP benefits to certain households with children that are leaving cash assistance programs. These additional benefits help families meet their nutritional needs while making the transition from cash assistance to employment.

Analysis of the need for the rule: Both social services districts and recipients benefitted from having the requirements of the TBA program set forth in State regulations.

Legal basis for the rule: 7 USC § 2020(s); Social Services Law § 20(3)(d) and 95

N. TDA-39-16-00010 Standard Utility Allowances for SNAP*

Amended 18 NYCRR § 387.12 to set forth the federally approved standard utility allowances as of October 1, 2016.

Analysis of the need for the rule: It is of great importance that the federally approved standard utility allowances for SNAP were applied to SNAP benefit calculations effective October 1, 2016. If post standard utility allowances were not updated on October 1, 2016, it could have resulted in thousands of SNAP dependent households receiving SNAP overpayments each month. Households receiving such overpayments could be subject to an extended period of SNAP recoupments at the rate of 10% of their monthly SNAP benefits to recover the resulting overpayments of SNAP benefits. Thus, the rule was necessary for the preservation of the public health and the general welfare of SNAP dependent households.

Legal basis for the rule: SSL §§ 17(a)-(b), (j), 20(3)(d) and 95; 7 USC § 2014(e)(6)(C); 7 CFR § 273.9(d)(6)(iii)

O. TDA-37-16-00004 PA Use of Resources - General Policy

Amended 18 NYCRR 352.23(b)(2) to update PA resource exemptions related to automobiles. Prior to this amendment, PA applicants and recipients were allowed to exempt one automobile, up to \$4,650 fair market value. The amendment raised the fair market value of the exempt automobile on the following time line: one automobile, up to \$10,000 fair market value, through March 31, 2017; one automobile, up to \$11,000 fair market value, from April 1, 2017 through March 31, 2018; and one automobile, up to \$12,000 fair market value, beginning April 1, 2018 and thereafter, or such other higher dollar value as the district may elect to adopt. However, if the automobile is especially equipped with apparatus for individuals with a disability, the apparatus must not increase the value of the automobile.

Analysis of the need for the rule: This amendment was needed to make State regulations consistent with §1 of Part X of Chapter 54 of the Laws of 2016.

Legal basis for the rule: SSL §§ 17(a)-(b), (j), 20(3)(d), 34(3)(f), 131(1) and 131-n; L. 2016, ch. 54, part X, section 1

P. TDA-36-16-00006 SNAP*

Amended 18 NYCRR § 387.1 to update State regulations by adding the definitions of “eligible food” and “trafficking of SNAP benefits” to reflect federal requirements regarding the trafficking of SNAP benefits.

Analysis of the need for the rule: The regulatory amendments were necessary to bring the State regulations into compliance with federal requirements and State practices.

Legal basis for the rule: 7 USC Ch. 51 and §§ 2011, 2013 and 2024; 7 CFR §§ 271.2 and 273.16; SSL §§ 17(a)-(b), (j), 20(3)(d) and 95; L. 2012, ch. 41

Rules adopted in 2014

Q. TDA-14-14-00014 State Supplement Program (SSP)*

Repeal of 18 NYCRR Part 398; addition of a new Part 398 and § 358-5.12 to set forth the process for OTDA's administration of the SSP and allow for telephone hearings to challenge SSP determinations.

Analysis of the need for the rule: These regulations provide the framework for OTDA's administration of the SSP. The regulations provide the initial and continuing eligibility requirements for additional State payments. They set forth the reporting responsibilities of applicants and recipients of the SSP benefits and the ramifications if they fail to comply with the requirements. The regulations address the issuance of notices of action and provide for administrative fair hearings. They also address when OTDA will replace additional State payments for recipients and when underpayments of such benefits will be corrected. Conversely, the regulations also provide when OTDA will recover overpayments and equivalent benefits from recipients. The regulations address OTDA's administrative responsibilities including confidentiality and document retention requirements. Lastly, the regulations allow telephone hearings for applicants and recipients of additional State payments.

Legal basis for the rule: SSL §§ 20(3)(d), 22(3)(f), (4), (8), 207, 211 and 212

R. TDA-36-14-00014 Noncompliance with SNAP Work Requirements; SNAP Conciliation Process*

Amended 18 NYCRR §§ 385.11 and 385.12 to render State regulations governing noncompliance and the conciliation process consistent with federal requirements.

Analysis of the need for the rule: These regulations were developed to make OTDA regulations pertaining to noncompliance and notice requirements consistent with federal regulations and policy. The regulations, in part, provide that SNAP applicants who fail to comply with work requirements without good cause are no longer subject to a durational sanction, and SNAP recipients will have the opportunity to avoid the imposition of a SNAP sanction by timely demonstrating compliance with the work requirements of the employment and training program as assigned by the District.

Legal basis for the rule: SSL § 95(1)(b); 7 USC §§ 2011, 2013 and 2029

S. TDA-38-14-00023 Standard Utility Allowances for SNAP*

Amended 18 NYCRR § 387.12 to update the standard utility allowances for SNAP to the federally approved levels as of October 1, 2014.

Analysis of the need for the rule: It was of great importance that the federally approved standard utility allowances for the SNAP were applied to SNAP benefit calculations effective October 1, 2014. If the standard utility allowances were not updated on October 1, 2014, it could have resulted in thousands of SNAP dependent households receiving underpayments each month. Thus, the rule was necessary for the preservation of the public health and general welfare of SNAP dependent households.

Legal basis for the rule: SSL §§ 20(3)(d) and 95; 7 USC § 2014(e)(6)(C); 7 CFR § 273.9(d)(6)(iii).

Rules adopted in 2009

T. TDA-17-08-00032 State-Confirmed Human Trafficking Victims*

Added Part 765 of Subchapter K to Title 18 NYCRR to govern the process and protocols for confirming an individual as a human trafficking victim in New York State.

Analysis of the need for the rule: The amendments provide more detailed instruction on protocols and procedures relating to the confirmation of human trafficking victims and the OTDA responsibilities. The need for the amendments is derived from the necessity to clearly define the participant agencies, the victim, and the terms describing the process of referral; to clearly describe the nature of OTDA's consultative role in the confirmation process; and to clearly describe the process for required notifications to the prescribed parties.

Legal basis: SSL Art. 10-D.

U. TDA-04-09-00011 Educational Activities*

Amended §§ 385.6(a) and (b), 385.7(a) and (b), and 385.9(c) of Title 18 NYCRR to provide additional opportunities to participate in education and other skill development activities.

Analysis of the need for the rule: The amendments were developed to increase the skills of individuals receiving public assistance through the provision of additional opportunities to participate in education and other skill development activities.

Legal basis: 42 United States Code (U.S.C.) §§ 601(a) and 607; SSL Art. 5, Title 9-B.

V. TDA-07-09-00014 Utility Service*

Amended § 352.5(e) of Title 18 NYCRR to suspend the enforcement of utility repayment agreements during periods of cold weather.

Analysis of the need for the rule: The amendment was developed to better enable districts to help protect the health and safety of households if they suffer utility shutoffs during a cold weather period as a result of high energy costs.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), and 131-s.

W. TDA-09-09-00007 Recovery of Overpayments*

Amended § 352.31(d)(1) of Title 18 NYCRR to delete the regulatory requirement to recoup/recover overpayments from all members of an assistance unit regardless of their ages at the time of overpayment.

Analysis of the need for the rule: This amendment was developed to benefit children by relieving them of the financial responsibility of an overpayment incurred when they were children in the assistance unit.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 106-b.

Rules adopted in 2004

X. TDA-03-04-00003 Supplemental Security Income (SSI) Benefits*

Repealed § 352.2(b) and added new §352.2(b); amended §§ 352.3(k)(3), (i), 352.30(a) and (f), and 352.31(a)(2); and added §352.3(l) to Title 18 NYCRR, to require districts to consider the presence in the household of an adult or child receiving SSI who would, except for the receipt of SSI, be required to be included in the public assistance household when determining the household's standard of need.

Analysis of the need for the rule: The amendments were developed to eliminate different budgeting methods required to be used for various family circumstances, and, with the exception of budgeting for households requesting and eligible to receive an emergency shelter allowance under § 352.3(k), to establish one budgeting method for determining the needs standard for a household that is applying for benefits.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 158, 349, and 355(3).

Y. TDA-28-03-00008 Eligibility of Refugees, Asylees, and Aliens for Public Assistance*

Amended §§ 349.3(a)(1)(iv), (vii), (2), (b), and 352.33; and added § 349.3(c) to Title 18 NYCRR to implement changes to the public assistance eligibility requirements for refugees, asylees, and aliens as set forth in Chapter 214 of the Laws of 1998.

Analysis of the need for the rule: The amendments were developed to implement provisions in Chapter 214 of the Laws of 1998, and to incorporate federal clarification of certain definitions related to citizenship and alien status.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 122, 131(1), and 355(3).

Z. TDA-13-04-00002 Cash Management Subsystem*

Amended § 600.6 of Title 18 NYCRR requiring districts to use the cash management subsystem of the welfare management system.

Analysis of the need for the rule: The amendment was developed to standardize local cash processing systems by requiring districts to use the cash management subsystem of the welfare management system for receipt of cash and for refunds and recoveries of past expenditures and the collection and tracking of overpayments; to reduce the number of systems used by districts to establish and collect recoveries and overpayments on a timely basis; to identify claims on collection cases; and to encourage more orderly claims processing.

Legal basis: SSL §§ 20(3)(d), 21, 21(2), 34(3)(f), and 82.

AA. TDA-17-04-00016 Exemption of Earned Income*

Amended § 352.20(a) and (b) of Title 18 NYCRR concerning the exemption of the earned income of full-time and part-time students when determining eligibility for public assistance.

Analysis of the need for the rule: The amendment was developed to implement Chapter 246 of the Laws of 2002, which amended the regulations to provide that all income earned by a dependent child receiving public assistance or for whom an application for such assistance has been made, who is a full-time or part-time student attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment, is exempt when determining eligibility for public assistance.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131-a(8), 158, 349, and 355(3).

Rules adopted in 1999

BB. TDA-30-98-00005 Child Support Cooperation Requirements*

Amended §§ 347.5, 360-3.2, 369.1, 369.2, 369.7, 370.2, and 370.9 of Title 18 NYCRR to require the local child support enforcement unit, instead of local public assistance or medical assistance unit, to determine whether an applicant/recipient has cooperated in establishing paternity and in establishing, modifying, and enforcing a support order for the child (for medical assistance, a medical support order only).

Analysis of the need for the rule: These amendments implemented Public Law 104-193, regarding cooperation in establishing paternity and establishing, modifying, or enforcing a support order for the child by applicants for and recipients of public assistance and medical assistance, and Chapter 398 of the Laws of 1997, requiring applicants for and recipients of medical assistance to cooperate in establishing paternity or establishing, modifying, or enforcing a medical support order for the child.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 111-a, and 364; Chapter 474 of the Laws of 1996.

CC. TDA-39-98-00067 Child Support Cooperation and Reduction of Benefits

Amended § 352.30 (d) of Title 18 NYCRR to implement provisions of Public Law 104-193 and Chapter 214 of the Laws of 1998.

Analysis of the need for the rule: This amendment conformed the regulations to changes in federal and State law, so that instead of an individual being ineligible for public assistance when the individual failed to cooperate in establishing paternity or in establishing, modifying, or enforcing a support order for the child (absent good cause for such failure or other exception from so cooperating), the public assistance otherwise available to the individual's household will be reduced by 25 percent.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131 (16).

DD. TDA-46-98-00015 Emergency Assistance to Families (EAF)

Amended §§ 372.1, 372.2, 372.4, and 372.6 of Title 18 NYCRR, in part, to implement provisions of § 38 of Part B of Chapter 436 of the Laws of 1997.

Analysis of the need for the rule: The amendments were developed to implement Chapter 436 of the laws of 1997, which amended § 350-j of the SSL concerning the types of care that EAF can pay for, eliminating the maximum time period for EAF eligibility, and setting forth other EAF eligibility requirements.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 350-j; § 38 of Part B of Chapter 436 of the Laws of 1997.

EE. TDA-47-98-00002 Tier II Family Shelters

Amended Part 900 of Title 18 NYCRR to conform the regulations governing the operation of shelters for homeless families to § 352.35 of Title 18 NYCRR.

Analysis of the need for the rule: The amendments were developed to update Part 900 of Title 18 of the NYCRR to conform to the regulations governing the provision of temporary housing assistance to persons that are homeless as set forth in 18 NYCRR § 352.35.

Legal basis: SSL §§ 20(3)(d) and 34(3)(f); Chapter 562 of the Laws of 1953.

FF. TDA-52-98-00007 Lottery Intercept

Added Part 396 to Title 18 NYCRR concerning the interception of lottery awards to repay public assistance received.

Analysis of the need for the rule: The amendment was developed to implement provisions of § 131-r of the SSL which authorized OTDA to recoup any public assistance paid over the prior 10 years from recipients of such assistance who won lottery prizes of \$600 or more. The amount of assistance to be recovered could not exceed 50% of the lottery prize.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131-r.

GG. TDA-07-99-00002 Child Assistance Program (CAP) Participants

Amended § 366.4(c)(2)(ii) and added § 366.7(o) to clarify the eligibility requirements for a family in receipt of Family Assistance (FA) to participate in the CAP and to add the repair of heating equipment, cooking stoves, and refrigerators to the list of special allowances to which CAP recipients could be entitled.

Analysis of the need for the rule: The amendments were developed to conform the State regulation to current practices by districts relative to the eligibility prerequisites that must be met by a family receiving FA to enroll in the CAP, and to remedy an administrative oversight in the original Part 366 of Title 18 NYCRR which did not include the repair of heating equipment, cooking stoves, and refrigerators on the list of special allowances.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131-z, and 355(3).

HH. TDA-10-99-00001 Supervisory Review*

Amended § 351.7 of Title 18 NYCRR to provide districts the option of conducting supervisory reviews on all actions on public assistance cases or of conducting supervisory reviews on selected cases.

Analysis of the need for the rule: The amendment was developed to give districts the option to forego supervisory review of applications for public assistance. There are cases in which strict guidelines can be applied to such applications and no discretion is involved, thereby reducing the need for a supervisor's review. If districts wished to review only a certain proportion of the cases, they could submit a plan to OTDA for approval setting forth requirements for supervisory review.

Legal basis: SSL §§ 20(3)(d) and 34(3)(f).

II. TDA-14-99-00014 Reporting Requirements*

Amended Part 651 of Title 18 NYCRR to implement § 149 of Part B of Chapter 436 of the Laws of 1997, which required that OTDA and the Department of Labor (DOL) collect data related to the operation of public assistance programs, including, but not limited to, information that must be submitted to the federal Department of Health and Human Services pursuant to Public Law 104-193.

Analysis of the need for the rule: The rule sets forth the districts' requirements for monthly reporting to OTDA and DOL.

Legal basis: SSL §§ 20(3)(d) and 34(3)(f); § 149 of Part B of Chapter 436 of the Laws of 1997.

JJ. TDA-40-99-00001 Allowances to Children Suffering from Spina Bifida*

Amended §§ 352.22(c), (f), (w), (x), and (y), and added § 352.22(bb) to Title 18 NYCRR to implement the provisions of Public Law 104-204, which provided that allowances paid on behalf of the natural children of Vietnam veterans who suffered from spina bifida could not be considered when determining eligibility for any federally-financed program.

Analysis of the need for the rule: These amendments implemented provisions of Chapter 18 of Part II of Title 38 of the U.S.C., as added by Public Law 104-204, and made technical corrections to several provisions of 18 NYCRR § 352.22 consistent with Public Law 104-193 and Chapter 436 of the Laws of 1997.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), 131-n, and 355(3).

CONCLUSION

* The asterisks identify rules for which a regulatory flexibility analysis, rural area flexibility analysis, or job impact statement was prepared.

The rule review may be accessed on OTDA's website at <http://otda.ny.gov/legal/rule-review-2019.pdf>.

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