

## Notice of Adoption

Temporary and Disability Assistance, Office of  
(SUBMITTING AGENCY)

- This adoption will amend the NYCRR.  
 This adoption will not amend the NYCRR.

**NOTE:** Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice. change in text

### 1. Action taken:

Addition of Part 901 to Title 18 NYCRR

"X" box if the rule was originally proposed as a consensus rule making.

### 2. Effective date of rule:

- Date this notice is published in the *State Register*.  
 This is a "rate making" as defined in SAPA §102(2)(a)(ii), and, is effective as follows:  
 Date of filing. \_\_\_\_\_  
 Other date (*specify*): \_\_\_\_\_  
 Other date (*specify*): \_\_\_\_\_  
 \_\_\_\_\_ days after filing.

### 3. Statutory authority under which the rule was adopted:

Social Services Law §§17(a)-(b) and (j); 20(2)(b); 34(3)(c)-(d) and (6); 412; 413; 424-a; 460-h; 495; Part Q of Chapter 56 of the Laws of 2017

### 4. Subject of the rule:

Mandated reporter requirement and background checks

### 5. Purpose of the rule:

To implement the State regulations as required by Part Q of Chapter 56 of the Laws of 2017

6. Terms and identification of rule :

A. I.D. No. of original notice of **proposed or emergency/proposed** rule making: TDA-31-17-00002 - EP

B. Comparison of the proposed rule to the adopted rule (CHECK ALL THAT APPLY):

No changes were made to the proposed rule.

● *Text/Summary does not need to be republished in the State Register. If the last previously published RIS, RFA, RAFA or JIS remain adequate and do not require correction, SKIP ITEMS 9-12 and do NOT attach any such statements. If any of the most recently published statements were deemed inadequate or required correction, complete Item 9, 10, 11, or 12 as applicable, do NOT attach previously published statements. Be sure to complete C (if applicable), and D, as well as remaining Items 7-8 and 13-14.*

Nonsubstantive changes were made in [Parts, sections, subdivisions or paragraphs]:

§901-1.1(a)(2)                      §901-2.2(d)                      §901-2.4(b)  
\_\_\_\_\_

● *Text/Summary is required to be republished in the State Register. Attach the original of the text as adopted (if proposed as full text, submit full text; if proposed as a summary, submit a summary) typed in scannable format. Do not skip Items 9-12; revised statements or explanatory statements are required.*

Text attached.

Summary attached.

This is a "rate making" as defined in SAPA §102(2)(a)(ii) and, pursuant to SAPA §202(7)(b), the agency elected to submit an original copy of a description of the substance. Substantial revisions were made in the following Parts, sections, subdivisions or paragraphs:

\_\_\_\_\_  
\_\_\_\_\_

C. List the publication date and I.D. No. of any previously published notice(s) of **revised** rule making:

Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_ -  
Publication date: \_\_\_\_\_, I.D. No. \_\_\_\_\_ -

D. Signed certification of adoption and full text of the rule are attached:

Signed certification of adoption (scanned pdf).

Full text of the rule (MS Word).

7. The text of the final rule and any required statements and analyses may be obtained from:

Agency contact Richard P. Rhodes, Jr.  
Agency name New York State Office of Temporary and Disability Assistance  
Office address 40 North Pearl Street, 16-C  
Albany, NY 12243-0001  
Telephone (518) 486-7503 E-mail: richard.rhodesjr@otda.ny.gov

8. Additional matter required by statute:

Yes (include below material required by statute).

\_\_\_\_\_

No additional material required by statute.

9. Revised Regulatory Impact Statement (RIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RIS contains:

The full text of the Revised RIS.

A summary of the Revised RIS.

B. A **statement is attached** explaining why a revised RIS is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RIS.

This is a technical amendment exempt from SAPA §202-a.

C.  A revised RIS is **not** attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

A revised RIS is **not** attached because this rule was proposed as a consensus rule as defined in SAPA

10. **Revised Regulatory Flexibility Analysis (RFA) for small businesses and local governments**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RFA contains:

The full text of the Revised RFA.

A summary of the Revised RFA.

B. A **statement is attached** explaining why a revised RFA is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RFA.

The changes will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The attached statement sets forth this agency’s findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C.  A revised RFA is **not** attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

A revised RFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

11. **Revised Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised RAFA contains:

The full text of the Revised RAFA.

A summary of the Revised RAFA.

B. A **statement is attached** explaining why a revised RAFA is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published RAFA.

The changes will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The attached statement sets forth this agency’s findings and the reason(s) upon which the findings were made, including what measures were used to determine those findings.

C.  A revised RAFA is not attached because this rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

A revised RAFA is **not** attached because this rule was proposed as a consensus rule as defined in SAPA §102(11).

12. **Revised Job Impact Statement (JIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

A. The attached Revised JIS contains:

The full text of the Revised JIS.

A summary of the Revised JIS.

B. A **statement is attached** explaining why a revised JIS is not required (check one box):

Changes made to the last published rule do not necessitate revision to the previously published JIS.

The changes will not impose a substantial impact on jobs and employment opportunities. The attached statement sets forth this agency’s findings that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

C. A revised JIS is **not** attached because:

This rule is a “rate making” as defined in SAPA §102(2)(a)(ii).

This rule was proposed by the State Comptroller or Attorney General.

13. **Assessment of Public Comment** (includes legislative comments)

(COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

- Attached is an assessment of public comment.  
No particular form is required, and it need **only** include comments not addressed in any previously published assessment for this rule. However, the assessment must be based on any written comments received by the agency or any comments presented at any public hearing held by the agency about this rule (include legislative comment). It must contain a summary and an analysis of the issues raised and significant alternatives suggested, a statement of the reason(s) why any significant alternatives were not incorporated, and a description of any changes made as a result of such comments.
- An assessment is not attached because no comments were received.
- An assessment is not required because this action is for a “rate making” as defined in SAPA §102(2)(a)(ii).

14. **Referenced material** (check one box):

- No information is being incorporated by reference in this rule.
- This rule contains referenced material in the following Parts, sections, subdivisions or paragraphs:

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15. **Initial Review of Rule** (SAPA §207)

(SELECT AND COMPLETE ONE)

- A.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3<sup>rd</sup> year after the year in which this rule is being adopted.
- B.  As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_ which is the 4<sup>th</sup> or 5<sup>th</sup> year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:
  - Attached is an assessment of public comment on the issue of the 4 or 5-year initial review period; or
  - An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
- C.  As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year \_\_\_\_\_ which is no later than the 5<sup>th</sup> year after the year in which this rule is being adopted.
- D.  Not Applicable. This is a “rate making” or a “consensus rule,” or a repeal of a rule.

**AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice)**

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name Richard P. Rhodes, Jr. Signature /s/ Richard P. Rhodes, Jr

Address N.Y.S.O.T.D.A., 40 North Pearl Street, 16-C, Albany, NY 12243-0001

Telephone (518) 486-7503 E-mail richard.rhodesjr@otda.ny.gov.

Date 09/26/2017

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**Please read before submitting this notice:**

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's *Register* procedures manual, *Rule Making in New York*.
2. Rule making notices, with any necessary attachments (in MS Word unless otherwise specified), should be e-filed via the Department of State website.

## **Revised Summary of the Rule**

The Office of Temporary and Disability Assistance (OTDA) is proposing the addition of 18 NYCRR Part 901, pursuant to Part Q of Chapter 56 of the Laws of 2017, to require publicly-funded emergency shelters for families with children to perform checks of the Statewide Central Register of Child Abuse and Maltreatment (SCR), the Staff Exclusion List of Category One Cases of Abuse and Neglect (SEL), and criminal history information for certain persons functioning in qualifying roles in publicly-funded emergency shelters for families with children and who have the potential for regular and substantial contact with children served by these emergency shelters. This rule also expands the list of individuals who are mandated reporters of child abuse and maltreatment by amending State regulations, consistent with recent amendments to Social Services Law § 413(1), to include employees of publicly-funded emergency shelters for families with children.

Add Subpart 901-1 addressing the mandated reporter requirement, SCR, and SEL.

Add § 901-1.1(a) to include definitions of the following terms that are used in this Subpart: contractor, facility, Justice Center, Office, prospective consultant, prospective employee, prospective volunteer, and publicly-funded emergency shelter for families with children. A technical change is being made to the definition of “facility” in § 901-1.1(a)(2) to correct a cross-reference within the subdivision.

Add § 901-1.1(b) to include the screening requirements, notice provisions, and record keeping requirements for publicly-funded emergency shelters for families with children regarding the SCR and the SEL checks. Provisions relating to the temporary approval of individuals subject to these checks prior to obtaining the results are included, as well as the analysis that must occur when an individual is found to be the subject of an indicated report.

Add § 901-1.1(c) to include the mandated reporter requirements for employees of publicly-funded emergency shelters for families with children when they have reasonable cause to suspect that a child coming before them in their professional or official capacity as an employee of a publicly-funded emergency shelter for families with children is an abused or maltreated child.

Add § 901-1.1(d) to include a severability provision so that if any provision of this Subpart or the application thereof to any person or circumstance is determined to be invalid, such determination shall not affect other provisions or applications of this Subpart and they are deemed to be severable.

Add Subpart 901-2 addressing criminal history information reviews.

Add § 901-2.1 to provide that this Subpart, relating to criminal history background checks, shall apply to every provider of services to publicly-funded emergency shelters for families with children.

Add § 901-2.2 to include definitions of the following terms that are used in this section: authorized person, criminal history information, Division, facility, Office, prospective assistant, prospective consultant, prospective employee, prospective volunteer, provider of services, publicly-funded emergency shelter for families with children, subject individual, and supervising social services district. A technical change is being made to the definition of “facility” in § 901-

2.2(d) to correct a cross-reference within the section. The word “contractor” is also being added to the definition to correct an omission.

Add § 901-2.3 to include the procedure, notice requirements, and informed consents relating to the submission of fingerprints by prospective employees, consultants, assistants and volunteers in order to obtain criminal history information. This section also provides that an individual subject to the background check requirement can withdraw from the application process, without prejudice, at any time.

Add § 901-2.4 to include the required procedure when a publicly-funded emergency shelter for homeless families with children receives criminal history information. Specifically, it requires that upon receipt of criminal history information from the Division of Criminal Justice Services, the shelter provider shall assess the information to consider and determine whether to approve or disapprove the prospective employee, prospective consultant, prospective volunteer or prospective assistant in accordance with the provisions of article 23-A of the Correction Law and Executive Law § 296(15) and (16). It also provides the subject individual the opportunity to explain why the application should not be denied and requires that the individual shall be provided with information detailing how to seek correction of information contained in the report. A technical change is being made to § 901-2.4(b) to clarify that the subdivision, like the others in this section, addresses a “prospective assistant.”

Add § 901-2.5 to include documentation and confidentiality provisions relative to criminal history background checks conducted pursuant to the regulation. It also provides that any party who willfully permits the disclosure of any confidential criminal history information obtained pursuant to this Subpart to parties not authorized to receive such information shall be guilty of a misdemeanor.

Add § 901-2.6 to include the required procedure when it is learned that an individual subject to a criminal background check has a pending criminal charges.

Add § 901-2.7 to include the responsibilities incumbent upon publicly-funded emergency shelters for families with children regarding recordkeeping, retention and disposal of criminal history information, and the requirement that each qualified shelter provider have policies and procedures to ensure compliance with the regulation.

Add § 901-2.8 to include a severability provision so that if any provision of this Subpart or the application thereof to any person or circumstance is determined to be invalid, such determination shall not affect other provisions or applications of this Subpart and they are deemed to be severable.

A copy of the full text of the regulatory proposal is available on OTDA’s website at <http://otda.ny.gov/legal/regulatory-activities.asp>.

**Title 18 NYCRR is amended by adding a new Part 901:**

**PART 901**

**MANDATED REPORTER REQUIREMENT AND BACKGROUND CHECKS**

**SUBPART 901-1**

**MANDATED REPORTER REQUIREMENT, STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT, AND REGISTER OF SUBSTANTIATED CATEGORY ONE CASES OF ABUSE OR NEGLECT**

(Statutory Authority: Social Services Law §§ 412, 413, 424-a, 495, Chapter 56 of the Laws of 2017)

Sec.

901-1.1 Mandated Reporter Requirement, Statewide Central Register of Child Abuse and Maltreatment, and Register of Substantiated Category One Cases of Abuse or Neglect.

**§ 901-1.1 Mandated Reporter Requirement, Statewide Central Register of Child Abuse and Maltreatment, and Register of Substantiated Category One Cases of Abuse or Neglect.**

(a) Definitions. When used in this Subpart, unless expressly stated otherwise, the following definitions apply:

(1) “Contractor” means any person who is employed by an individual, corporation, partnership or association which provides goods or services to the publicly-funded emergency shelter for families with children, and who has the potential for regular and substantial contact with the children who are served by the publicly-funded emergency shelter for families with children.

(2) “Facility,” as set forth in paragraph [(1)] (8) of this subdivision, provides shelter to families with children receiving temporary housing assistance and receiving services from the operator or provider, or a social services district in instances where the social services district directly operates the facility, or a contractor on behalf of the operator or provider or such social services



district, which provides any of the following: meals, supervision, assessment services, permanent housing preparation services, recreational services, information and referral services, health services, or child-care services.

(3) "Justice Center" means the Justice Center for the Protection of People with Special Needs.

(4) "Office" means the New York State Office of Temporary and Disability Assistance.

(5) "Prospective consultant" means any person who has applied to be a consultant for the publicly-funded emergency shelter for families with children, including but not limited to in the capacity of providing consultation and/or advice, who will have the potential for regular and substantial contact with children who are served by the publicly-funded emergency shelters for families with children.

(6) "Prospective employee" means any person who has applied to be employed by the publicly-funded emergency shelter for families with children who will have the potential for regular and substantial contact with children who are served by the publicly-funded emergency shelters for families with children.

(7) "Prospective volunteer" means a person who has applied to participate in activities with or for the benefit of persons receiving services from a publicly-funded emergency shelter for families with children, under the supervision of staff or management of such provider, for which he or she receives no salary or remuneration, who will have the potential for regular and substantial contact with children who are served by the publicly-funded emergency shelters for families with children.

(8) "Publicly-funded emergency shelter for families with children" means any facility, as defined in this Subpart, with overnight sleeping accommodations and that is used to house recipients of temporary housing assistance and which houses or may house children and families with children, except residential programs for victims of domestic violence licensed by the New York State Office of Children and Family Services.

(b) Screening requirements for publicly-funded emergency shelters for families with children are as follows:

(1) All references to “regular and substantial contact with a service recipient” for purposes of applying section 495 of the Social Services Law to publicly-funded emergency shelters for families with children shall mean the “potential for regular and substantial contact with children who are served by a publicly-funded emergency shelter for families with children.”

(i) Publicly-funded emergency shelters for families with children must inquire of the Office of Children and Family Services whether any prospective employee, prospective consultant, prospective volunteer, or contractor who will have the potential for regular and substantial contact with the children who are served by the publicly-funded emergency shelter for families with children, is the subject of an indicated report of child abuse or maltreatment on file with the Statewide Central Register of Child Abuse and Maltreatment (SCR) via the SCR database check process as required in section 424-a of the Social Services Law. Each publicly-funded emergency shelter for families with children may inquire of the Office of Children and Family Services whether any current employee who has the potential for regular and substantial contact with children being served by the publicly-funded emergency shelter for families with children is the subject of an indicated report of child abuse or maltreatment on file with the SCR. An inquiry regarding any current employee may be made only once in any six-month period.

(ii) Publicly-funded emergency shelters for families with children must check the Register of Substantiated Category One Cases of Abuse or Neglect (“staff exclusion list”) maintained by the Justice Center per section 495 of the Social Services Law before determining whether to hire or otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor who will have the potential for regular and substantial contact with children served by the publicly-funded emergency shelter for families with children.

(2) Prior to making any inquiries pursuant to paragraph (1) of this subdivision, the publicly-funded emergency shelter for families with children must notify, using a prescribed form, the person who will be the subject of the inquiries, that:

- (i) an inquiry will be made to determine whether such person is the subject of an indicated report of child abuse or maltreatment on file with the SCR; and
- (ii) an inquiry will be made to determine whether such person is listed on the Register of Substantiated Category One Cases of Abuse or Neglect maintained by the Justice Center per section 495 of the Social Services Law.

(3) *Temporary approval pending SCR determination.*

(i) Except as set forth in subparagraph (ii) of this paragraph, a publicly-funded emergency shelter for families with children may not permit a person hired by the publicly-funded emergency shelter for families with children, a volunteer, consultant, or contractor to have unsupervised contact with children served by the publicly-funded emergency shelter for families with children prior to obtaining the results from the SCR database check as required by section 424-a of the Social Services Law and this subdivision.

(ii) An employee, consultant, contractor, or volunteer of a publicly-funded emergency shelter for families with children may have contact with children served by the publicly-funded emergency shelter for families with children prior to the receipt of the SCR database check results required by section 424-a of the Social Services Law and this subdivision only where such person, is in the line of sight supervision of an existing staff member for whom:

- (a) the result of SCR database check made pursuant to section 424-a of the Social Services Law has been received by the publicly-funded emergency shelter for families with children and the publicly-funded emergency shelter for families with children hired the existing staff member with knowledge of the result of the inquiry; or

(b) an inquiry to the SCR was not made because such employee was hired before July 19, 2017, the effective date of the amendment to section 424-a of the Social Services Law, which added publicly-funded emergency shelters for families with children as a provider agency for purposes of that statute.

(4) If an applicant, staff person or other person about whom the publicly-funded emergency shelter for families with children has made an inquiry, pursuant to paragraph (1) of this subdivision, is found to be the subject of an indicated report of child abuse or maltreatment or a substantiated report of abuse or neglect, such publicly-funded emergency shelter for families with children must determine, on the basis of information it has available and in accordance with guidelines referenced in Social Services Law 424-a and those developed and disseminated by the Office, whether to hire or retain the person as an employee, volunteer or consultant or to permit the person providing goods or services, to have access to children being served by the publicly-funded emergency shelter for families with children.

(5) Whenever such person is hired, retained, used or given access to children, such publicly-funded emergency shelter for families with children must maintain a written record, as part of the application file or employment or other personnel record of such person, of the specific reason(s) why such person was determined to be appropriate and acceptable as an employee, volunteer, consultant or provider of goods or services with access to children being served by the publicly-funded emergency shelter for families with children.

(c) Mandated Reporting

(1) In accordance with the provisions of sections 413 and 415 of the Social Services Law, employees of publicly-funded emergency shelter for families with children must report or cause a report to be made whenever they have a reasonable cause to suspect a child being served by the publicly-funded emergency shelter for families with children is being abused or maltreated by a parent or other person legally responsible for the child. The report must be made immediately to the SCR. The mandated reporting responsibility applies whenever such employees have reasonable cause to suspect that a child

coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child. The provider, director, other person in charge, or a designated agent of the publicly-funded emergency shelter for families with children shall provide all current and new employees with information on how to recognize the signs of child abuse and maltreatment.

(2) A report regarding any suspected incidents of child abuse or maltreatment concerning a child being served by the publicly-funded emergency shelter for families with children must be done in the following manner:

(i) Employees of publicly-funded emergency shelter for families with children must personally make, or cause to be made, an immediate report to the SCR consistent with section 415 of the Social Services Law by telephone, followed by a written report within 48 hours, in the form and manner prescribed by the Office of Children and Family Services, to the child protective service of the social services district in the county in which the child resides.

(ii) After making the initial report, the reporting employee must immediately notify the provider, director, other person in charge or a designated agent of the publicly-funded emergency shelter for families with children that the report was made.

(d) *Severability.* If any provision of this Subpart or the application thereof to any person or circumstance is determined to be invalid, such determination shall not affect other provisions or applications of this Subpart not subject to such determination, and, to this end, the provisions of this Subpart are deemed to be severable.

## SUBPART 901-2

### CRIMINAL HISTORY INFORMATION REVIEWS

(Statutory Authority: Social Services Law § 460-h; Civil Service Law § 50; Corrections Law Article 23-A; Chapter 56 of the Laws of 2017)

Sec.

901- 2.1 Applicability

901 -2.2 Definitions

901-2.3 Submission of fingerprints by prospective employees, consultants, assistants and volunteers

901-2.4 Criminal history review

901-2.5 Documentation and Confidentiality

901-2.6 Notification of subsequent criminal charges or convictions

901-2.7 Responsibilities of providers of services

901-2.8 Severability

#### **§ 901-2.1 Applicability.**

This Subpart shall apply to every provider of services to publicly-funded emergency shelters for families with children as defined in section 901-2.2 of this Subpart.

#### **§ 901-2.2 Definitions.**

When used in this Subpart, unless expressly stated otherwise, the following definitions apply:

(a) “Authorized person” means any person designated by a provider of services and authorized to request, receive and check criminal history information in accordance with this Subpart.

(b) “Criminal history information” means a record of pending criminal charges, criminal convictions which are not vacated or reversed, and certificates filed pursuant to subdivision (2) of section 705 of the Correction Law, and which the New York State Division of Criminal Justice Services is authorized to maintain pursuant to subdivision (6) of section 837 of the Executive Law.

(c) “Division” means the New York State Division of Criminal Justice Services.

(d) “Facility,” as set forth in [paragraph (1) of this] subdivision (k) of this section, provides shelter to families with children receiving temporary housing assistance and receiving services from the operator or provider, or a social services district in instances where the social services district directly operates the facility, or a contractor on behalf of the operator or provider or such social services district, which provides any of the following: meals, supervision, assessment services, permanent housing preparation services, recreational services, information and referral services, health services, or child-care services.

(e) “Office” means the New York State Office of Temporary and Disability Assistance.

(f) “Prospective assistant” means any person who has applied to be utilized by the provider of services, in assisting any of the foregoing in any manner in the provision of such services who will have the potential for, or may be permitted, regular and substantial contact with children who are served by the publicly-funded emergency shelter for families with children.

(g) “Prospective consultant” means any person who has applied to be utilized by the provider of services, including, but not limited to, in the capacity of providing consultation and/or advice, who will have the potential for, or may be permitted, regular and substantial contact with children who are served by the publicly-funded emergency shelter for families with children.

(h) “Prospective employee” means any person who has applied to be employed or utilized by the provider of services who will have the potential for, or may be permitted, regular and substantial contact with children who are served by the publicly-funded emergency shelter for families with children.

(i) “Prospective volunteer” means a person who has applied to participate in activities with or for the benefit of persons receiving services from a provider of services, under the supervision of staff or management of such provider, for which he or she receives no salary or remuneration, who will have the potential for, or may be permitted, regular and substantial contact with children who are served by the publicly-funded emergency shelter for families with children.

(j) “Provider of services” means a provider of services to a publicly-funded shelter for families with children which is expressly required to request a check of criminal history information pursuant to section 460-h of the Social Services Law and this Subpart.

(k) “Publicly-funded emergency shelter for families with children” means any facility, as defined in this Subpart, with overnight sleeping accommodations and that is used to house recipients of temporary housing assistance and which houses or may house children and families with children, except residential programs for victims of domestic violence licensed by the New York State Office of Children and Family Services.

(l) “Subject individual” means a person whose criminal history information is required to be checked by a provider of services pursuant to section 460-h of the Social Services Law and this Subpart.

(m) “Supervising social services district” means the social services district in which the publicly-funded emergency shelter for families with children is located.

**§ 901-2.3 Submission of fingerprints by prospective employees, consultants, assistants and volunteers.**

(a) The provider of services shall perform criminal history information checks of all prospective employees, prospective consultants, prospective assistants and prospective volunteers it seeks to hire, contract with, or otherwise utilize the services of who will have the potential for, or may be permitted, regular and substantial contact with children who are served by publicly-funded emergency shelters for families with children.

(b) Criminal history information checks required in accordance with this Subpart shall apply only to persons who are prospective employees, prospective consultants, prospective assistants or prospective volunteers as defined in this Subpart.

(c) The Division shall supply every provider of services subject to the provisions of this Subpart with information which may be utilized to facilitate compliance with this Subpart.



(d) *Fingerprint submission process.* Upon receipt of an application from a prospective employee, prospective consultant, prospective assistant or prospective volunteer who will have the potential for, or may be permitted, regular and substantial contact with children who are served by publicly-funded emergency shelters for families with children, every provider of services subject to this Subpart shall:

(1) Inform the individual, in writing, that the provider of services is required to request a check of his or her criminal history information and assess the results of such check in accordance with section 460-h of the Social Services Law;

(2) Obtain signed informed consent from the subject individual on a form acceptable to the Division indicating that such person has:

- (i) been informed of the right and procedures necessary to obtain, review and seek correction of his or her criminal history information;
- (ii) been informed of the reason for the request for his or her criminal history information;
- (iii) been informed that the criminal history information sought will include a New York state criminal history information check;
- (iv) consented to such request for a report of his or her New York state criminal history;
- (v) or has not, to the best of his or her knowledge, ever been convicted of a crime in New York state or any other jurisdiction other than as specified by the person on that form;
- (vi) or does not have, to the best of his or her knowledge, any felony or misdemeanor charges currently pending against him or her that remain unresolved; and
- (vii) supplied the provider of services with his or her current mailing or home address.

(3) Upon receiving such consent, the provider of services shall:

- (i) in the form and manner prescribed by the Division require the subject individual to provide fingerprints to the Division; and
- (ii) complete and submit a form provided by the Division, such form(s) to be completed by the authorized person(s) and maintained by the provider of services, and include a sworn statement from the authorized person(s) attesting that:

- (a) the authorized person(s) identifies the name of each person for whom a criminal history information check is being requested, and attests that each such person is either a prospective employee, prospective consultant, prospective assistant or prospective volunteer of the provider of services, and, as such, the person is a subject individual, as defined in section 901-2.2 of this Subpart;

- (b) the authorized person(s) identifies the specific duties which qualify the provider of services to request a check of the subject individual's criminal history information;

- (c) the results of the criminal history information check will be used by the provider of services solely for the purposes authorized by law; and

- (d) the provider of services, its agents, and employees are aware of and will abide by the confidentiality requirements of the Division and any applicable laws, regulations, policies and procedures.

- (iii) maintain documentation demonstrating that the provider of services has complied with paragraph (3) of this subdivision.

(e) A subject individual may withdraw from the application process, without prejudice, at any time regardless of whether he or she or the provider of services has reviewed his or her criminal history

information. The provider of services shall notify the Division of such withdrawal, and the Division shall return any fingerprints of the subject individual to the provider of services which shall then provide any fingerprints and/or criminal history information received to the subject individual.

**§ 901-2.4 Criminal history information review.**

- (a) The Division shall promptly provide the results of the criminal history check to the provider of services only by a method of secure and confidential delivery, and such information shall at all times be maintained, where authorized by the Division, by the authorized person(s) for the provider of services in a secure place.
- (b) Upon receipt of any criminal history information from the Division, the provider of services shall assess the information to consider and determine whether to approve or disapprove the prospective employee, prospective consultant, prospective volunteer or prospective [applicant] assistant in accordance with the provisions of Article 23-A of the Correction Law and subdivisions (15) and (16) of section 296 of the Executive Law.
- (c) If the criminal background check indicates that the subject individual has no known criminal history, the provider of services shall continue consideration of the subject individual's application.
- (d) Where the criminal history record of a prospective employee, prospective volunteer, prospective consultant or prospective assistant reveals a pending charge for any felony, the provider of services shall hold the application in abeyance until the charge is finally resolved.
- (e) Where the criminal history record of a prospective employee, prospective volunteer, prospective consultant or prospective assistant reveals a pending charge for any misdemeanor, the provider of services may hold the application in abeyance until the charge is finally resolved.
- (f) Prior to making a determination to deny a subject individual's application, the provider of services shall afford the prospective employee, prospective volunteer, prospective consultant or prospective assistant an opportunity to explain in writing, within 15 calendar days from the date the notification was mailed, why the application should not be denied. The prospective employee, prospective

volunteer, prospective consultant or prospective assistant may request an extension of up to 15 days. The opportunity for an explanation shall be sent non-electronically, in a manner of mailing that is capable of verifying the date of mailing and shall include a copy of the subject individual's criminal history information, a copy of Article 23-A of the Correction Law, and information about the subject individual's right to seek correction of any incorrect information contained in the criminal history and the procedure for same.

**901-2.5 Documentation and Confidentiality.**

(a) Only the authorized person or his or her designee and the relevant subject individual shall have access to New York State criminal history information received by a provider of services. However, criminal history information may be disclosed by the authorized person to other parties who are directly participating in any decision with regard to such subject individual's application, and to whom this information is relevant.

(b) The authorized person and any other party to whom such criminal history is disclosed shall keep this information strictly confidential.

(c) Any party who willfully permits the disclosure of any confidential criminal history information obtained from a criminal history information check pursuant to this Subpart to parties not authorized to receive same shall be guilty of a misdemeanor.

**§ 901-2.6 Notification of subsequent criminal charges.**

(a) The Division shall promptly forward notification that there is a pending criminal action or proceeding relating to an individual for whom criminal history information was previously requested by a method of secure and confidential delivery, addressed to the provider of services. Such information shall be marked "confidential" and shall, at all times, be maintained, where authorized by the Division, by the provider of services in a secure place.

(b) Upon receiving notification from the Division of the pending criminal action or proceeding, a provider of services shall:

- (1) take any and all appropriate actions to ensure that the health, safety, and welfare of its clients are protected, and:
- (2) such action or actions shall be documented; and
- (3) in cases involving pending criminal actions or proceedings against prospective employees, prospective volunteers, prospective consultants or prospective assistants, it shall be the responsibility of the provider of services to inquire as to the outcome of such proceedings if the prospective employee, prospective volunteer, prospective consultant or prospective assistant remains in service with the provider of services.

**§ 901-2.7 Responsibilities of providers of services**

- (a) Recordkeeping. (1) Each provider of services subject to the provisions of this Subpart shall establish, maintain, and keep current the following records:
  - (i) a current roster of employees and list of staffing assignments;
  - (ii) a current roster of volunteers;
  - (iii) a current roster of assistants;
  - (iv) a current roster of consultants;
  - (v) names of all persons for whom a request for a criminal history information check was submitted to the Division, identifying whether the person was applying for an employment, consultant, assistant or volunteer position;
  - (vi) for each such name identified, except for withdrawing persons, a copy of his or her signed informed consent form required pursuant to section 901-2.3 of this Subpart, and determination of the provider of services with regard to the employment, consultant, assistant or volunteer service of the individual; and
  - (vii) a record identifying whether such individual was hired, contracted with or permitted to engage in volunteer services, the position such individual holds, and any limitations placed on such employment or service.

(2) Such records shall be maintained, where authorized by the Division, in a manner that ensures the security of the information contained therein for the purpose of monitoring compliance with this Subpart.

(b) Retention and disposal of information.

(1) Each provider of services subject to the provisions of this Subpart shall maintain, where authorized by the Division, information necessary to demonstrate compliance with this Subpart, as set forth in subdivision (a) of this section, for at least six years after which the person ceases to be a subject individual, as defined in section 901-2.2 of this Subpart (i.e., the person is no longer employed in, or volunteers as, or serves as an assistant or consultant in a position that involves regular and substantial contact with children who are served by the shelter and applicants who are ultimately not hired), unless otherwise directed by the Office.

(2) A provider of services subject to this Subpart shall destroy the summary of the criminal history information and/or any other information related to criminal background checks unless otherwise authorized by the Division.

(3) Destruction of criminal history information and provider of services determinations shall be performed in a manner that ensures the confidentiality of the information.

(4) If a subject individual withdraws from the application process, without prejudice, at any time regardless of whether he or she or the provider of services has reviewed his or her criminal history information, upon such withdrawal from the application process, any fingerprints and criminal history information received by the provider of services shall be returned to the withdrawing applicant.

(c) Policies and procedures. Each provider of services subject to the provisions of this Subpart shall have policies and procedures designed to implement the provisions of this Subpart. Amendment of existing personnel and volunteer policies and procedures to reflect these new requirements may be deemed sufficient compliance with this subdivision.

**901-2.8 Severability.**

If any provision of this Subpart or the application thereof to any person or circumstance is determined to be invalid, such determination shall not affect other provisions or applications of this Subpart not subject to such determination and, to this end, the provisions of this Subpart are deemed to be severable.

## **Statement in lieu of a Revised Regulatory Impact Statement (RIS)**

Changes made to the published rule do not necessitate revisions to the previously published RIS. The revisions made to the rule at §§ 901-1.1(a)(2), 901-2.2(d), and 901-2.4(b) merely clarify the regulatory text and do not materially alter its purpose, meaning, or effect. A revised RIS is unnecessary.



**Statement in lieu of a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASB&LG)**

Changes made to the published rule do not necessitate revisions to the previously published RFASB&LG. The revisions made to the rule at §§ 901-1.1(a)(2), 901-2.2(d), and 901-2.4(b) merely clarify the regulatory text and do not materially alter its purpose, meaning, or effect. A revised RFASB&LG is unnecessary.

**Statement in lieu of a Revised Rural Area Flexibility Analysis (RAFA)**

Changes made to the published rule do not necessitate revisions to the previously published RAFA. The revisions made to the rule at §§ 901-1.1(a)(2), 901-2.2(d), and 901-2.4(b) merely clarify the regulatory text and do not materially alter its purpose, meaning, or effect. A revised RAFA is unnecessary.

### **Statement in lieu of a Revised Job Impact Statement (JIS)**

Changes made to the published rule do not necessitate revisions to the previously published statement in lieu of a JIS. The revisions made to the rule at §§ 901-1.1(a)(2), 901-2.2(d), and 901-2.4(b) merely clarify the regulatory text and do not materially alter its purpose, meaning, or effect. A revised statement in lieu of a JIS is unnecessary.



# Office of Temporary and Disability Assistance

**ANDREW M. CUOMO**  
Governor

**SAMUEL D. ROBERTS**  
Commissioner

**BARBARA C. GUINN**  
Executive Deputy Commissioner

## CERTIFICATION

I hereby certify that the attached amendments adding Part 901 to Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, are duly adopted by me, Executive Deputy Commissioner Barbara C. Guinn, acting pursuant to designation under Public Officers Law § 9, on this date pursuant to authority vested in the New York State Office of Temporary and Disability Assistance by Social Services Law §§ 17(a)-(b), and (j), 20(2)(b), 20(3)(d), 34(3)(c)-(e) and (6), 412–413, 424-a, 460-h, and 495, and Part Q of Chapter 56 of the Laws of 2017.

These amendments shall be effective upon publication of the Notice of Adoption in the New York State Register.

The Notice of Emergency Adoption and Proposed Rule Making for these amendments was previously published in the New York State Register on August 2, 2017, under I.D. No. TDA-31-17-00002-EP.

No other publication of prior notice is required by statute.

/s/ Barbara C. Guinn

September 26, 2017

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Barbara C. Guinn  
Executive Deputy Commissioner

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Date