

Notice of Proposed Rule Making

Temporary and Disability Assistance, Office of
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
 This rule making does not require Executive Chamber approval.

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.

1. A. *Proposed action:*

Amendment of	§§ 351.2(i)(1)(i)-(iv) and 351.2(l)(7)(i) of	Title <u>18</u>	NYCRR
Amendment of	§ 352.8(a) of	Title <u>18</u>	NYCRR
Amendment of	§ 352.8(b)(4)(i)-(iii) of	Title <u>18</u>	NYCRR
Amendment of	§ 352.8(c)(1)(i) and § 352.8(e) of	Title <u>18</u>	NYCRR
Amendment of	§ 385.8(c)(12) of	Title <u>18</u>	NYCRR
Amendment of	§ 651.2(a)(8)(i) and (iii) of	Title <u>18</u>	NYCRR

- B. This is a consensus rule making. A statement is attached setting forth the agency's determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. This rule was previously proposed as a consensus rule making under I.D. No. [REDACTED]. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. *Statutory authority under which the rule is proposed:*

Social Services Law §§ 20(3)(d), 34(3)(f), 95(1)(b), 131, 132(4), and 337; § 122 of Part B of Chapter 436 of the Laws of 1997

3. *Subject of the rule:*

Technical amendments to State regulations updating the names of State agencies and replacing obsolete and stigmatizing terms.

4. *Purpose of the rule:*

To update State regulations by replacing obsolete and stigmatizing terms.

5. *Public hearings* (check box and complete as applicable):

- A public hearing is not scheduled. (*SKIP TO ITEM 8*)
- A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 60 days **after** publication of this notice unless a different time is specified in statute.)
- A public hearing is not required by law, but is scheduled below.

Time:	Date:	Location:

6. *Interpreter services* (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. *Accessibility* (check appropriate box only if a public hearing is scheduled):

All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):

A. The full text of the rule is attached because it does not exceed 2,000 words.

B. A summary of the rule is attached because the full text of the rule exceeds 2,000 words.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].

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

Agency contact Thomas Makely

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) 402-3966 *E-mail:* thomas.makely@otda.ny.gov

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Agency contact _____

Agency name _____

Office address _____

Telephone _____ *E-mail:* _____

11. *Public comment will be received until:*

60 days after publication of this notice (MINIMUM public comment period).

5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).

Other: (specify) _____.

12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register*, I.D. No. _____.

13. *Expiration date* (check only if applicable):

This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. *Additional matter required by statute*:

Yes (include below material required by statute).

No additional material required by statute.

15. *Regulatory Agenda* (See SAPA §202-d[1]):

This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*:
01/31/2024

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register*.

Not applicable.

16. **Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.

Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.

An assessment of public comments is not attached because no comments were received.

Not applicable.

17. **Regulatory Impact Statement (RIS)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached**, because this rule is:

subject to a consolidated RIS printed in the *Register* under I.D. No.: _____; issue date: _____.

exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

exempt, as defined in SAPA §102(11) [Consensus Rule Making].

C. A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. **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 RFA contains:

The full text of the RFA.

A summary of the RFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not** attached, because this rule:

is subject to a consolidated RFA printed in the *Register* under I.D. No.: _____ - _____ ;
issue date: _____ .

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

19. **Rural Area Flexibility Analysis (RAFA)**

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

A. The attached RAFA contains:

The full text of the RAFA.

A summary of the RAFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

A consolidated RAFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached**, because this rule:

is subject to a consolidated RAFA printed in the *Register* under I.D. No.: _____ - _____ ;
issue date: _____ .

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. Job Impact Statement (JIS)

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

A. The attached JIS contains:

 The full text of the JIS. A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated JIS, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding 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.

 A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.C. A JIS is **not attached**, because this rule:

is subject to a consolidated JIS printed in the *Register* under I.D. No.: _____ - _____ issue date: _____.

 is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is proposed by the State Comptroller or Attorney General.**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 Thomas Makely Signature _____Address N.Y.S.O.T.D.A., 40 North Pearl Street, 16-C, Albany, NY 12243-0001Telephone (518) 402-3966 E-Mail thomas.makely@otda.ny.govDate 09/03/2024**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), should be e-filed via the Department of State website.

Justification for Consensus Rule Making

The Office of Temporary and Disability Assistance (OTDA) is proposing a rule to replace the following obsolete and stigmatizing terms in existing State regulations: (1) “Office of Alcoholism and Substance Abuse Services” would be replaced with “Office of Addiction Services and Supports” (OASAS) at 18 NYCRR §§ 351.2(i)(1)(i)–(ii) and (iv)(a), 352.8(b)(4)(ii), and 352.8(c)(1)(i); (2) “abusing” would be replaced with “misusing” at 18 NYCRR § 351.2(i)(1)(ii); (3) “alcohol and/or substance abuse” at 18 NYCRR §§ 351.2(i)(1)(i)–(iii), 351.2(l)(7)(i), 352.8(a), 385.8(c)(12), and 651.2(a)(8)(i) and (iii) would be replaced with “substance use disorder”; (4) “Office of Mental Retardation and Developmental Disabilities” would be replaced with “Office for People With Developmental Disabilities” at 18 NYCRR § 352.8(b)(4)(i)–(iii); (5) “schools for the mentally retarded” at 18 NYCRR § 352.8(b)(4)(iii) would be replaced with “schools for persons with intellectual/developmental disabilities”; and (6) “hostel for the mentally retarded” and “residential facility for the mentally retarded,” both at 18 NYCRR § 352.8(e), would be replaced with “hostel for persons with intellectual/developmental disabilities” and “residential facility for persons with intellectual/developmental disabilities,” respectively.

OTDA does not anticipate that any person will object to the proposed regulatory amendments contained in this consensus rule making. The proposed regulatory amendments would update obsolete names of State agencies found in the current State regulations and would replace stigmatizing terms.

Part 351 of Title 18 NYCRR is amended as follows:

Subparagraphs (i)–(iv) of paragraph (1) of subdivision (i) of § 351.2 are amended to read as follows:

(i) Requirements for [alcoholism and] substance [abuse] use disorder screening, assessment and rehabilitation services.

(l) Screening and assessment. (i) Investigation of eligibility for public assistance must include a screening for [alcohol and/or] substance [abuse] use disorder of all heads of households and of all adult household members, using a standardized screening instrument developed by the Office of [Alcoholism and Substance Abuse] Addiction Services and Supports in consultation with the office. Such screening will be performed at the time of application and periodically thereafter, unless the recipient is actively participating in [alcoholism and/or] substance [abuse] use disorder treatment in accordance with the provisions of this subdivision, but no more frequently than every six months, unless the district has reason to believe that an applicant or recipient is [abusing] misusing or dependent on alcohol and/or drugs.

(ii) When the screening process indicates that there is reason to believe that an applicant or recipient is [abusing] misusing or dependent on alcohol or drugs, or there is other evidence that an applicant or recipient is [abusing] misusing or dependent on alcohol or drugs, the local district must require the applicant or recipient to undergo a formal [alcohol or] substance [abuse] use disorder assessment, which may include drug testing, to be performed by [an alcohol and/or] substance [abuse] use disorder professional credentialed by the Office of [Alcoholism and Substance Abuse] Addiction Services and Supports. The assessment may be performed directly by the district or pursuant to contract with the district.

(iii) If the formal assessment determines that the applicant or recipient is unable to work by reason of his or her need for treatment for [alcohol or] substance [abuse] use disorder, or the applicant or recipient has been ordered to participate in [alcoholism or] substance [abuse] use disorder treatment by a court of competent jurisdiction, the social services official must refer the individual to an appropriate [alcoholism and/or] substance [abuse] use disorder treatment program.

(iv) To be considered an appropriate treatment program, the treatment program must:

(a) be licensed or certified by the Office of [Alcoholism and Substance Abuse] Addiction Services and Supports or operated by the United States Department of Veterans Affairs and be determined by the social services official to meet the rehabilitation needs of the individual, in accordance with standards developed by the Office of [Alcoholism and Substance Abuse] Addiction Services and Supports;

Subparagraph (i) of paragraph (7) of subdivision (I) of § 351.2 is amended to read as follows:

(7) Waivers. (i) Waivers are a temporary suspension of public assistance program requirements including, but not limited to, residency rules, child support and paternity cooperation requirements, [alcohol and] substance [abuse] use disorder screening and referral requirements, and employment and training requirements. Any such waivers must be consistent with federal law.

Subdivision (a) of § 352.8 is amended to read as follows:

(a) The standard of need includes an allowance to be provided by each social services district for persons residing in the following living situations: room and board; approved residential programs for victims of domestic violence; maternity homes; family homes or boarding homes; certified family care or certified residential care facilities; [drug-abuse-control] certified substance use disorder treatment facilities and residential facilities for the mentally disabled. With respect to residential programs for victims of domestic violence operated in accordance with the provisions of Parts 452 and 453 or 454 or 455 of this Title, the allowance is established in accordance with the provisions of Part 408 of this Title.

Subparagraphs (i)–(iii) of paragraph (4) of subdivision (b) of § 352.8 is amended to read as follows:

(i) Level 1. Family-type homes certified by the Office of Children and Family Services and family care homes certified by the Office of Mental Health or the Office [of Mental Retardation and] *for People With* Developmental Disabilities.

(ii) Level 2. Residences for adults certified by the Department of Health; programs providing intensive residential rehabilitation services, community residential services or supportive living services certified by the Office of [Alcoholism and Substance Abuse] *Addiction Services and Supports*; supportive community residences, supervised community residences and individualized residential alternatives certified by the Office [of Mental Retardation and] *for People With* Developmental Disabilities; and apartment treatment, congregate treatment and congregate support facilities certified by the Office of Mental Health. For purposes of this subparagraph, congregate care Level 2 facilities do not include intermediate care facilities or respite care facilities.

(iii) Level 3. Adult homes and enriched housing programs certified by the Department of Health and schools for [the mentally retarded] *persons with intellectual/developmental disabilities* certified by the Office [of Mental Retardation and] *for People With* Developmental Disabilities.

Subparagraph (i) of paragraph (1) of subdivision (c) of § 352.8 is amended to read as follows:

(i) Boarding homes or under room and board arrangements or approved residential programs for victims of domestic violence in which three meals per day are provided, or facilities certified by the Office of [Alcoholism and Substance Abuse] *Addiction Services and Supports* other than community residences, in the amount of \$45; infirmaries, nursing homes, intermediate care facilities, or similar medical facilities, in the amount of \$40.

Subdivision (e) of § 352.8 is amended to read as follows:

(e) An allowance to meet the cost of board and room or care in a maternity home, family-type home, adult home, residence for adults, enriched housing program, intermediate care facility, hostel for [the mentally retarded] persons with intellectual/developmental disabilities or residential facility for [the mentally retarded] persons with intellectual/developmental disabilities shall be made for the entire month in which the case is accepted if essential to retain the use of the facility. An allowance may be made to pay for the cost of such care for a period prior to the month in which the case was opened, but not prior to the date of application under the following specified conditions:

Part 385 of Title 18 NYCRR is amended as follows: Paragraph (12) of subdivision (c) of § 385.8 is amended to read as follows:

(12) For the purposes of this subdivision, an individual who is work limited due to an impairment related to [alcohol or] substance [abuse] *use disorder* shall not be deemed engaged in work solely by participating in [an alcohol or] a substance [abuse] *use disorder* treatment program unless such individual is engaged in a work activity as a part of such treatment program.

Part 651 of Title 18 NYCRR is amended as follows:

Subparagraphs (i) and (iii) of paragraph (8) of subdivision (a) of § 651.2 are amended to read as follows:

(8) Substance [abuse] use disorder treatment programs including but not limited to:

(i) number of recipients receiving substance [abuse] use disorder treatment services for which the cost of such services is paid for by the social services district using public assistance monies;

(iii) types of substance [abuse] use disorder treatment programs receiving reimbursement from social services districts.

Statement in Lieu of a Job Impact Statement (JIS)

A JIS is not required for the proposed regulatory amendments to 18 NYCRR §§ 351.2(i)(1)(i)–(iv), 351.2(l)(7)(i), 352.8(a), 352.8(b)(4)(i)–(iii), 352.8(c)(1)(i), 352.8(e) 385.8(c)(12), and 651.2(a)(8)(i) and (iii). The proposed regulatory amendments seek to update State regulations by replacing obsolete and stigmatizing terms. It is apparent from the nature and purpose of the proposed regulatory amendments that they would not have a substantial adverse impact on jobs and employment opportunities in the public and private sectors of the State. The proposed regulatory amendments would not substantively affect the jobs of employees at the state or social service district (district) level. Adoption of the proposed regulatory amendments, which would merely update State regulations to eliminate obsolete and stigmatizing terminology, would not impose any new annual costs or administrative burdens upon the districts.