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DEPARTMENT OF STATE
Office of Information Services

NEW YORK STATE
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- State Academy of Fire Science

Notice of Availability of State and Federal Funds

State agencies must specify in each notice the last date on which they will accept public comment. Agencies always accept public comment for a minimum of 45 days following publication in the *Register* of a Notice of Proposed Rule Making, and for 30 days after publication of a Notice of Revised Rule Making. When a public hearing is required by statute, the hearing cannot be held until 45 days after publication of the notice; and comment must be accepted for at least five days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies accept comment through close of business on the next succeeding workday.

For notices published in this issue:

- the 45-day period expires Saturday, January 3, 1998
- the 30-day period expires on Friday, December 19, 1997

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NOTICE OF ADOPTION

Copies of Documents for Fair Hearings

I.D. No. SCS-31-96-00001-A
 Filing No. 1852
 Filing date: Oct. 29, 1997
 Effective date: Nov. 19, 1997

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 358-3.7(b)(1) and (2) and 358-4.2(c) and (d); repeal of section 358-3.7(b)(4); and addition of section 358-3.7(b)(4) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 22(8) and 34(3)(f)

Subject: Copies of documents for fair hearings.

Purpose: To relieve districts from costly State imposed mandates by conforming department regulations to Federal requirements regarding the provision of copies of documents from the case file by social services districts to appellants at fair hearing.

Text was published in the notice of proposed rule making, I.D. No. SCS-31-96-00001-P, Issue of August 6, 1997.

Final rule as compared with last published rule: No changes.

Revised rule making(s) were previously published in the State Register on August 13, 1997.

Text of rule and any required statements and analyses may be obtained from: Kevin Kelley, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 473-6369

Regulatory Impact Statement

On August 13, 1997, the Department of Social Services published in the *State Register* a Notice of Revised Rulemaking for a regulation concerning the furnishing of documents at fair hearings. Since publication of that Notice, Chapter 436 of the Laws of 1997 was enacted. That Chapter, in addition to enacting comprehensive welfare reform in this State, also renamed the Department of Social Services as the Department of Family Assistance. The new Department is composed of two distinct offices, the Office of Temporary and Disability Assistance and the Office of Children and Family Services. In addition, Chapter 474 of the Laws of 1996, transferred responsibility for the Medical Assistance program from the Department of Social Services to the Department of Health, including the conduct of hearings for applicants for and recipients of such assistance.

As a result of the enactment of Chapter 436 of the Laws of 1997 and Chapter 474 of the Laws of 1996, the statutory authority section of the impact statement published on August 13, 1997, with the revised regulation needs to be amended. Set forth below is a revised statutory authority section for that regulation. Since the remainder of the impact statement published on August 13, 1997, does not have to be revised, it has not been repeated.

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the New York State Department of Social Services (Department) to establish rules, regulations, and policies to carry out its powers and duties. Section 22 of the SSL grants various persons the right to appeal from decisions of social services officials concerning their eligibility for public assistance and care or the amount of such assistance. Section 22(8) of the SSL requires the Department to promulgate such regulations as are necessary to implement that section. The Commissioner of the Department is required by section 34(3)(f) of the SSL to establish regulations for the administration of public assistance and care within the State both by the State itself and by social services districts. Chapter 436 of the Laws of 1997, renamed the Department of Social Services as the Department of Family Assistance with two distinct offices, the Office of Temporary and Disability Assistance and the Office of Children and Family Services. Under Chapter 436, the financial support functions of the Department of Social Services became the responsibility of the Office of Temporary and Disability Assistance. In addition, Chapter 436 provides that the person serving as the Commissioner of the Department of Social Services on the effective date of Chapter 436 will serve as the Commissioner of the Office of Temporary and Disability Assistance.

The Department of Health is required by section 364(2)(h) of the SSL to make policies, rules and regulations for maintaining a system of hearings for applicants for and recipients of Medical Assistance adversely affected by the actions of the Office of Temporary and Disability Assistance or social services districts and for making final administrative deter-

minations concerning eligibility for Medical Assistance and issuing final decisions concerning such matters.

Assessment of Public Comment

Comments on the revised regulations were received from two advocate groups and five social services districts.

The social services districts wrote in support of the revised regulations. One district raised the issue of restoring the amendment that limited the mailing of documents only to persons for whom it would be a substantial hardship to travel to the district to obtain copies of the documents. In the initial publication of the proposed amendments, mailing of documents was so limited. That amendment was eliminated based on the widespread negative comments about the proposed amendment and the severe hardship it would impose on appellants, particularly appellants residing in rural counties and those who reside in outlying boroughs of New York City. The elimination of the amendment also was based on the consideration of the expenses that would be incurred by districts for reimbursing the transportation and possible child care costs incurred by appellants traveling to income maintenance centers to obtain documents. This was extensively discussed in the Assessment of Comments published with the revised regulations.

One district objected to giving a hearing officer the right to preclude the introduction of documents since the focus of a hearing has to be on "determining the truth". However, we have not revised the proposed amendments in response to this comment since such action must be permitted in situations where circumstances require such action be taken, such as where a delay would cause harm to an appellant.

In addition, one district suggested that all amended sections state that documents be sent to appellants or their representatives, not appellants and their representatives. We have rejected this suggestion. For many years we have required that representatives receive copies of all correspondence which is provided to appellants. This policy is contained in 18 NYCRR 358-3.9 which is not revised by this package of regulatory amendments.

The two advocate groups did not support the proposed regulations. They raised issues which, for the most part, were raised in response to the initial regulations and which were discussed in the Assessment of Comments published with the revised regulations.

In response to the comment that the Office is leaving it to the 58 social services districts to determine what "a reasonable time before the date of the hearing" means, we disagree. It is clearly within the jurisdiction of the hearing officer to make this determination and we have expanded and clarified the hearing officer's powers in this area in the proposed regulations.

No changes have been made to the revised regulations as a result of these comments.